

JUDAISM

Some Current Aspects of *Kashrut*: Law and Practice

A Symposium

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Genack — Temple Grandin — Peter S. Knobel — Joe M.
Regenstein and Carrie E. Regenstein — Gedalia
Dov Schwartz — Marc D. Stern — Moshe
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The Origins of Muslim Attitudes Towards the Jews and Judaism

Jacob Lassner

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JUDAISM

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STATEMENT OF PURPOSE

In increasing measure, modern men are turning again to the quest for a worldview on the issues that are timeless — the meaning of life, the challenge of death, the purpose of suffering, the significance of the individual, his relation to society, and the goal of history. In order to advance this enterprise of spiritual discovery of our time this Journal has been projected. It will be primarily concerned with the philosophy, ethics, and religion of Judaism as a factor in the contemporary world . . .

We are committed to the proposition that Judaism has positive value today for Jews and for the world . . . At the same time, we disassociate ourselves from the dangerous tendency toward the hardening of party lines on the contemporary Jewish scene . . . The members of the Board of Editors belong to every school of Jewish life or to none. The trends popularly referred to as Orthodox, Conservatism, Reform, Reconstructionism, as well as others that as yet have no specific names, have their advocates among us, though no institution or movement is officially represented . . . Undoubtedly, our differences will find expression in these pages, but we shall be at one in opposing the dogmatism which takes for granted that one's own particular standpoint has a monopoly on truth and the authoritarianism which would suppress any contrary point of view.

Judaism will be dedicated to the quest for truth in the spirit of freedom. Our columns will be open to anyone who has something significant to say and the ability to say it well. New and unconventional interpretations, whatever their standpoint, will be welcomed from every source, for we share the conviction of the Talmud that "Both these and the others are the words of the living God." *From the introductory article by Robert Gordis, "Toward a Renaissance of Judaism" in Vol. I, No. 1.*

The First Reader

Keeping Kosher Today

If, today, anybody still has lingering doubts about the public acceptability of keeping kosher, those doubts should be laid to rest by a news item in the New York Times of Sept. 12, 1990. It indicated that a firm in Manhattan was offering kosher French wine futures for 1991 and 1992! The prices quoted were impressive.

Such a development would have been sheer fantasy a generation or two ago when *kashrut* was, generally, limited to the home and to the integrity of the local butcher and baker. Today, as we all know, the picture is much different. As is pointed out in some of the papers in this issue, *kashrut* is big business, with thousands of certified kosher items being available on market shelves. Scientific developments have created food substitutes for hitherto unacceptable products. On the other hand, chemicals which are only for use in the manufacturing process and are removed from the final product may, under some circumstances, derive from non-kosher sources. Obviously, careful reading of labels is a "must."

Why this development has taken place is a matter of sociological and psychological speculation. One answer is that there has been a major rise in the economic status of those to whom *kashrut* is important, and they are seeking to broaden their gustatory experience, witness the considerable number of gourmet-level kosher restaurants and caterers, at least in major cities, both in the United States and abroad. Another answer is that many Jewish women, like their non-Jewish peers, are now working outside of the home, thus leaving less time for domestic activities and, thereby, creating a greater demand for prepared kosher food. Then, too, there is the rise of ethnicity, with its concomitant interest in food particularities. Kosher cooking has certainly been advantaged by that development.

An especially significant element, we believe, is that Jews are no longer soft-peddalling their Jewishness. Though the 19th century dictum advocated being a Jew in one's home and an undifferentiated citizen in public, many Jews today have abandoned that schizophrenia. In the last century, classical reform abandoned *kashrut*; by the end of this, one there is evidence of a return to observance, both privately and publicly.

In the light of these developments, we are devoting most of this issue

to the subject of *kashrut*, its implementation, its problems — both in this country and abroad — and its resurgence, and have included papers that are technical, that are personal, and that are analytical.

The writers are all experts in their respective fields, and include: *Odelia Alroy* on “Kosher Wine,” *Berel Berkovits* on “Challenges to *Shehitah* in Europe,” *M. Herbert Danzger* on “The Meanings of Keeping Kosher: Views of the Newly Orthodox,” *Menachem Genack* on “Industrial Kashrut Supervision,” *Temple Grandin* on “Humanitarian Aspects of *Shehitah* in the United States,” *Peter S. Knobel* on “Reform Judaism and Kashrut,” *Joe M. Regenstein* and *Carrie E. Regenstein* on “Looking in on Kosher Supervision of the Food Industry,” *Gedalia Dov Schwartz* on “*Kashruth* — Problems and Solutions,” *Marc D. Stern* on “Kosher Food and the Law,” and *Moshe Dovid Tendler* on “The *Kashruth* Laws: On the Interface of Halakhah and Science.”

The Relationship Between Judaism and Islam

In addition to the papers dealing with *kashrut*, we have included another dealing with a totally different current problem and how it began. The conflict between Jews and Muslims is not merely a contemporary squabble over geography, but has deep-lying religious bases. Islam and Christianity are often referred to as the daughter-religions of Judaism, but, obviously, there is not much harmony in the family. All three are monotheistic, but, in their development and in figures whom they venerate, they have moved significantly apart. Islam, in particular, developed its own interpretation of Jewish scripture and, from that, its special attitude towards Jews as a people.

In “The Origins of Muslim Attitudes Towards the Jews and Judaism,” *Jacob Lassner* sheds a new and revealing light on what is, certainly in our day, a very complex relationship.

R.B.W.

Kosher Food and the Law

MARC D. STERN

SOME SIXTY YEARS BEFORE JEWS REGULARLY began to appear in American courts arguing about the constitutionality of menorahs and *crèches* in public places, issues concerning kosher food were on the judicial agenda, where they remain to this day. *Kashruth* litigation can be broken into five categories: the enactment and constitutionality of ordinances or statutes prohibiting the passing off of non-kosher food products as kosher; suits challenging rabbinic pronouncements regarding the *kashruth* of particular food establishments; efforts by the states to regulate or eliminate kosher slaughter; allegations of price fixing or other distortions of market mechanisms in pricing kosher food products; and efforts by prisoners to obtain kosher food. This article focuses on the first two categories. A legal history of the others will have to wait another day.

I

Writing in 1887, a Hungarian Jewish immigrant to the United States described in a letter to a rabbi in his homeland the chaotic state of the kosher food industry — its charlatans, profiteers and outright crooks — which, coupled with the huge influx of immigrants who were unfamiliar with local circumstances, made any assurance of *kashruth* all but impossible.¹ Efforts to reduce or eliminate the chaos by appointing a communal “Chief Rabbi” — Rabbi Jacob Joseph — failed miserably, in large part because of vigorous opposition by the kosher food industry to his efforts to police that very industry.²

In response to that situation, the New York State legislature, in 1915, enacted the nation’s first kosher food law,³ and it has served as a model for all subsequent kosher food legislation. As it stands now (and for the most part as it was originally enacted), the New York Act prohibits passing off non-kosher food as kosher, and requires stores selling kosher and non-kosher food to post signs stating that fact. Violations of the statute were, and still are, misdemeanors, except in the case of very large cases of fraud in the sale of meat, which can be a felony. Kosher food is described as that meeting “Orthodox Hebrew”

1. M. Weinberger, *Ha-Yehudim Ve-ha-Yahadut B'New York* (1887), p. 13.

2. See 10 *Encyclopedia Judaica* 221, S.V. Jacob Joseph.

3. Penal L. § 435, (4) Laws of 1915, c. 233.

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religious requirements.⁴ In subsequent years, various miscellaneous provisions have been appended to the law, but these provisions are of secondary importance. The *kashruth* laws of other states generally follow the New York model, again with minor variations.

Although much is known about the general problem which gave rise to the enactment of the New York State statute, almost nothing is known about its specific origins. It does appear, though, that notwithstanding the Jewish community's long-standing resistance to government involvement in religious affairs,⁵ there was no organized Jewish opposition to the passage of the legislation.

4. The New York Law is part of the New York Agricultural and Market Law § 201-a. The most relevant sections currently provide:

1. A person who, with intent to defraud, sells or exposes for sale any meat or meat preparations, article of food or food products, and falsely represents the same to be kosher or kosher for Passover ... either by direct statement orally, or in writing, which might reasonably be calculated to deceive or lead a reasonable man to believe that a representation is being made that such food is kosher or prepared in accordance with the orthodox Hebrew religious requirements, or falsely represents any food products or the contents of any package or container to be so constituted and prepared ... or sells or exposes for sale in the same place of business both kosher and non-kosher food or food products ... and who fails to indicate on his window signs and all display advertising, in block letters at least four inches in height, "kosher and non-kosher meat sold here", or "kosher and non-kosher food sold here"; or who displays on his window, door, or in his place of business words or letters in Hebraic characters other than the word "kosher", or any sign, emblem, insignia, six-pointed star, symbol, or mark in simulation of same, without displaying in conjunction therewith in English letters of at least the same size as such characters, signs, emblems, insignia, symbols, or marks the words "we sell kosher meat and food only", or "we sell both kosher and non-kosher meat and food", as the case may be, is guilty of a class A misdemeanor ...
2. All fresh meats and poultry offered for sale at retail as kosher shall be marked on the label when packaged or by a sign when not packaged, with the words "soaked and salted" or "not soaked and salted" as the case may be. Such words when marked on the label or by a sign shall be in letters at least as large as the letters of the words on the label or sign designating such meat and poultry as kosher.
3. Every person who sells or exposes for sale, at wholesale or retail, any kosher meat, meat by-products or poultry shall retain all records with respect to the origin of such kosher meat, meat by-products or poultry, subject to inspection by the department; provided however that kosher meat, meat by-products or poultry packed off-premises and labelled as kosher by the packer thereof shall be excepted from the record-keeping requirements of this subdivision....

Other provisions of the statute deal with kosher hotels, labelling of Passover and *pareve* foods, and record keeping requirements imposed on kosher slaughterhouses.

In addition to the statute, there are administrative regulations, 1 N.Y.C.R.R. 255, at least one of which requires that certain procedures be undertaken under the supervision of an Orthodox rabbi, a provision of very doubtful constitutionality.

5. See J.W. Pratt, *Religion, Politics and Diversity* (1967); M. Borden, *Jews, Turks and Infidels* (1984). A review of the contemporary Yiddish press on its attitudes (if any) toward the "kosher Law" would be highly desirable, particularly given the ideological diversity of the Yiddish press in the early part of this century.

The repercussions of the law's enactment were soon in coming. Two kosher butchers charged with violating the law brought suit to challenge its validity. They alleged that the law, enforcing a particular religious standard, deprived them of religious liberty. Without much ado, their claim was brushed aside:

There is no invasion here of religious freedom or personal rights. The statute is directed against a form of fraud, the victim of which is probably only a person belonging to a particular religious order; but such protection, instead of being contrary to the constitutional provision which forbids the interference with the free exercise and enjoyment of religious profession and worship, is in distinct accord therewith. The Legislature cannot enact a religious creed, but the Constitution enjoins religious freedom, and men of all creeds are entitled to the protection of the law of the land in undisturbed enjoyment of such freedom. Such protection is the evident aim of the statute which occasions this discussion.⁶

No appeal was taken from this decision and, as far as appears from the reported opinion, no Jewish group intervened in the case.

Several years later, the constitutionality of the Act was challenged in the state court by a different butcher — this time on the ground that the law was unconstitutionally vague because of the sheer mass of rabbinic law concerning *kashruth*, to say nothing of the disagreements amongst the rabbinate on the subject. The claim, in other words, was that no one could tell in advance that a particular piece of meat was not kosher, and that, therefore, its sale was illegal. The New York courts brushed aside that claim in *People v. Atlas*.⁷

After the legislature made several minor revisions in the statute in 1922, the statute was again challenged on vagueness grounds by several kosher food processors, this time in a lawsuit in the federal courts. The federal district court for New York rejected the claim without publishing any opinion, and an appeal was taken to the United States Supreme Court.

The chief contention of the challengers in this case, *Hygrade Provision Co. Inc. v. Sherman*,⁸ was again that the law was hopelessly vague. Citing the New York courts' construction of the statute in *People v. Atlas*, the Supreme Court held that the statute was violated only if the seller intentionally passed off non-kosher products as kosher. Because a successful prosecution required a showing of malevolent intent, the pos-

6. *People v. Goldberger*, 163 N.Y.S. 663 (1916). It is interesting to note that the Court also held that the phrase "kosher" had, by 1916, entered the English language, so that the statute was not void on the ground that it was not comprehensible to the average citizen.

7. *People v. Atlas*, 130 N.E. 921, 230 N.Y. 629 (1921), *affg.*, 183 App. Div. 595, 170 N.Y.S. 834 (1918). The Court of Appeals (on which Judge Benjamin Cardozo was then serving) did not write a separate opinion.

8. *Hygrade Provision Co. Inc. v. Sherman*, 266 U.S. 497 (1925). The only Jewish member of the Court, Justice Brandeis, did not participate in the decision. The quotation in the text is found at 266 U.S. at 501-02. The lower court's opinion is not reported.

sibility that there might be substantial rabbinic disagreement about a particular product posed no constitutional difficulty, even though the federal Constitution's Due Process Clause required that criminal statutes define that which is forbidden with precision. When the seller proceeded in good faith on the assumption that a particular product was kosher, he could not be prosecuted:

It thus appears that, whatever difficulty there may be in reaching a correct determination as to whether a given product is kosher, appellants are unduly apprehensive since they are not required to act at their peril but only to exercise their judgment in good faith, in order to avoid coming into conflict with the statutes. Indeed, putting the statutes aside, such judgment they would be bound to exercise upon ordinary principles of fair dealing. By engaging in the business of selling kosher products they in effect assert an honest purpose to distinguish to the best of their judgment between what is and what is not kosher.

Probably because the Establishment Clause of the First Amendment of the Constitution ("Congress shall make no law respecting an Establishment of religion") was then thought not to apply to state laws, no claim was made under it in the federal court action.

The enactment of the law did not put an end to fraudulent practices in the kosher food trade, particularly, it seems, in regard to the slaughter of poultry. A report by a rabbinic advisory committee to the Mayor of the City of New York, Jimmy Walker, issued in 1931, detailed these abuses. A meeting of all the Orthodox rabbis in New York was then called to deal with the problem. After several efforts, it was decided by an overwhelming majority of New York's Orthodox rabbinate to incorporate a Kashruth Association, which would affix a *plumba* (seal) on each chicken slaughtered under its supervision.

There was a modest fee charged for the Association's services, charges that the courts ultimately found to be reasonable. Orthodox Jews were forbidden by an *issur*, a ban issued by the Orthodox rabbinate, from eating poultry slaughtered in New York City not bearing the Association's seal.⁹

State officials charged with enforcing kosher food laws in New York City attempted to incorporate this *issur* into the kosher food laws, charging butchers who sold chickens without the *plumba* from the Association with violating the law. The effect of this prosecutorial strategy was to give the sanction of state law to the *issur* of the majority of Orthodox

9. The events leading up to this *issur* are traced in *SSRB Packing Corp. v. Kashruth Association*, 285 N.Y.S. 879 (1936), and *People v. Gordon*, 172 Misc. 2d 543, 14 N.Y.S. 2d 21 (Special Sessions, 1939), *rev'd*, 258 A.D. 421, 16 N.Y.S. 2d 833 (1940). The story is well told in Elazar and Goldstein, "The Legal Status of the American Jewish Community," in 1972 *American Jewish Year Book* at pp. 40-43. The 1932 *American Jewish Year Book* at p. 38 reports a constitutional challenge to a New Jersey kosher food law by an Orthodox rabbinic group, but I have been unable to find any formal reference to that case.

rabbis, and their efforts to maintain control over the slaughter of kosher poultry.

A trial court¹⁰ agreed with state officials that the *issur* was *de facto* incorporated into the statute, since it was an authoritative interpretation of “Orthodox Hebrew” religious law. The intermediate appellate court reversed, finding that a failure to comply with this *issur* did not render the poultry unkosher. (For example, poultry ritually slaughtered outside of the city did not, by terms of the *issur*, need a *plumba* and yet was unquestionably kosher.)¹¹ New York’s highest court affirmed the intermediate court’s decision without writing its own opinion.

Here matters stood for some time. Other states enacted kosher food laws, occasionally over opposition from non-Orthodox groups. The President of one Reform synagogue in California objected to a proposal to enact a California law similar to New York’s on the ground that “Judaism need not call upon the State to settle its own internal affairs.” Writing in 1931, the same year as the mayoral committee in New York detailed problems in New York’s kosher poultry industry, the writer pointedly noted the existence of kosher food fraud in New York despite its anti-fraud law. This opposition was unavailing.¹²

Some thirty years later, California was the site of the next challenge to the constitutionality of these statutes. Again, however, the challenge was not grounded on government’s enforcement of religious law, but on the by-then familiar ground that, given the variety of rabbinic opinion on *kashruth*, no one could know what was, in fact, kosher. California’s intermediate appellate court, relying on the *Atlas* and *Hygrade* cases rejecting similar challenges to New York’s law, upheld the statute.¹³ The court noted that the California statute was modelled on the New York one and, like it, should be interpreted to apply only to intentional violation of the kosher laws.

Though modelled after the New York law, California’s statute differed in one important way. It defined food as kosher only if it was in “strict compliance with every Jewish law and custom pertaining to [the ritual slaughter of animals].” The court acknowledged that this odd language, which required, under penalty of state law, adoption of every possible *halakhic* stringency, introduced an element of uncer-

10. *People v. Gordon*, 172 Misc. 543, 14 N.Y.S. 2d 333 (Special Sess. 1939).

11. 258 A.D. 421, 16 N.Y.S. 2d 833 (1940), *aff’d*, 283 N.Y. 705, 28 N.E. 2d 717 (1940). Chief Judge Lehman took no part in the latter decision. The Kashruth Association filed an *amicus* brief in support of the government’s argument. No other Jewish organization participated in the case.

12. The quotation is reported in Elazar and Goldstein, the “The Legal Status of the American Jewish Community,” 1972 *American Jewish Year Book* at p. 37. For a list of states with such laws, see *Ibid.*, at p. 35, n. 13. Since that list was compiled, Georgia and Louisiana have enacted such laws. At least one city, Miami Beach, Florida, also has such a law.

13. *Ehrlich v. Municipal Court*, 11 Cal. Rptr. 758, 55 Cal. 2d 553, 360 P.2d 334 (1961).

tainty into the California statute beyond that which existed in New York's law. Instead of grappling with the plaintiff's contention that this additional language rendered the statute vague and unconstitutional, the court simply held that this added language was mere surplusage.

The first Establishment Clause challenge to a kosher food law in some fifty five years arose out of an effort to enforce the kosher food ordinance of Miami Beach.¹⁴ The defendant had been fined for selling non-kosher-for-Passover cakes as kosher-for-Passover. On appeal, the defendant argued that the ordinance established religion by compelling it, under threat of prosecution, to comply with religious law. Although that claim was plainly substantial, the Florida court gave it almost no weight. Omitting only citations, the Florida court's entire discussion reads as follows:

Rather than to prohibit the free exercise of the religion, the ordinance serves to safeguard the observance of its tenets, and to prohibit actions which improperly would interfere therewith. Validity of enactments such as the ordinance involved here has been recognized and upheld.

This plainly was not a very persuasive answer to the challenge. Predictably, it did not put an end to subsequent Establishment Clause challenges to kosher food laws. Thus, in one recent case there was a dispute about the proper way to prepare tongues for sale to the kosher market. A butcher, backed by his supervising (Orthodox) rabbi, insisted that the tongues were properly prepared; the state's kosher food inspector disagreed, and proposed a fine. The butcher responded with an Establishment Clause challenge to the constitutionality of New York's kosher food law.¹⁵ That effort was rebuffed on purely technical grounds, and the butcher was referred to the state courts if he wished to pursue his claim. He apparently dropped the matter.

A more limited Establishment Clause claim was raised by the Hebrew National Company in another federal court challenge to New York's kosher food enforcement efforts. Hebrew National was cited for allegedly possessing improperly *kashered* meat. It, in turn, challenged the constitutionality of that citation.¹⁶ While it agreed that the kosher food laws were, on their face, constitutional, and could be applied to cases involving outright fraud, Hebrew National argued that those laws could not be applied to it in this case without resolving a theological dispute among rabbis.

The company noted that, while the state inspectors concluded that the meat in question was not kosher, its own rabbi had certified all of its products as kosher. It argued that his "certification was conclusive

14. *Sossins Systems, Inc. v. City of Miami Beach*, 262 So. 2d (Fla. Ct. of Appeals, 1972).

15. *Brach's Meat Market v. Abrams*, 668 F. Supp. 275 (S.D.N.Y. 1987). The dispute involved the deveining (*treboring*) of the tongue, a matter of disagreement among rabbinic authorities.

16. *Hebrew National Foods v. Rubin*, 89 Civ. 2930 (MGC) (S.D.N.Y. 1989).

evidence of compliance with the statute.” Since the Supreme Court had held that civil courts could not resolve intra-faith theological disputes, it followed that Hebrew National, which was answering to a higher authority, could not be regulated by the state invoking *its* higher authority.

Terming Hebrew National’s theory “interesting”, the judge nevertheless refused to pass on it. The gist of Hebrew National’s overall complaint, she decided, was that the citation entered against it was a form of retaliation for its intention, since consummated, to move from New York to Indiana. That being so, the complaint was not that the State was enforcing a particular religious view in preference to another, but that the State was acting out of motives which would invalidate any prosecution, no matter what its subject. Ultimately, the State agreed that Hebrew National could not be prosecuted under the circumstances, because “when you get into questions of rabbinic interpretation, you start to cross the line between church and state.”¹⁷

The most serious challenge yet to the kosher food laws is pending in New Jersey. A kosher butcher was cited for two violations of the New Jersey kosher food regulations:¹⁸ possessing meat which had been neither soaked and salted, nor labelled as such (according to the butcher, the mislabelling was due to an inadvertent error); and possession of tongues which had been prepared in a way which made them unfit for sale as kosher.¹⁹ The butcher store was under the supervision of an Orthodox rabbi.

Aside from denying that there was any intentional violation of *kash-ruth* (the butcher argued that the method used for preparing the tongues was that *required* by New York kosher food inspectors), the butcher responded with a broad challenge to the very idea of kosher food laws, making several attacks on them:

a) by defining kosher food as that which meets “Orthodox Hebrew” requirements, the state has decreed a single standard of religious observance, to the exclusion of all others, such as Conservative or Reform Judaism. Accordingly, the State was literally establishing a religion, just as it would if it decreed that only the King James Bible could be sold

17. JTA Community News Reporter (July 27, 1990), quoting an anonymous official of the New York Department of Agriculture & Markets.

18. *Perretti v. Ran-Dav County Kosher and N.J. Alliance of Kosher Caterers v. State of New Jersey*, Docket UNN-C-80-89. The butcher was joined in his challenge by an association of kosher caterers. New Jersey’s kosher food statute, N.J.S.A. 2A-108-6, was repealed in 1978 and replaced by administrative regulations.

19. Meat must be soaked and salted to remove blood before cooking. Meat which is not soaked or salted within three days of slaughtering may be eaten only if roasted over an open flame. Obviously, then, a kosher butcher must label meat as to whether it was salted, and, if not, when it was slaughtered. In short, meat which is more than three days old but not soaked and salted can be “kosher” (literally “fit”), but only if the consumer is advised of the restrictions on its use.

as *the Bible*. The problem was compounded, in the butcher's view, because the official in charge of *kashruth* was an ordained Orthodox rabbi.

b) it is impossible for prosecutorial authorities or judges to determine what is kosher without having to decide religious questions which are beyond their competence. In this case, for example, the butcher claimed that the citation was part of a long-running doctrinal dispute between its certifying rabbi and the state's kosher inspector and other Orthodox rabbis.

The State responded by insisting that its sole motivation was to prevent frauds from being perpetrated against consumers, who were paying premium prices for kosher food. The law required no one to participate in a religious ceremony, nor to perform any other religious ritual, nor to eat kosher food. What New Jersey law required — and all that is required — was that those who seek to profit from the sale of kosher foods sell what they claim to be selling.

As to the argument that the law prescribes any one standard of *kashruth*, the state conceded that where Orthodox authorities disagree, any "legitimate interpretation of the standard practiced in the industry" will suffice.²⁰ Moreover, a store could sell meat that is kosher according to Reform or Conservative standards *if it disclosed* that it was departing from Orthodox standards.²¹

The trial court upheld the legality of the regulation,²² relying chiefly on the presumption that any government enactment is presumed to be constitutional. A divided Appellate Division affirmed. It reasoned that the meaning of the word "kosher" was sufficiently understood by people in the trade so that it was not unconstitutional to require persons in the trade to make a good faith effort to insure that the food they sold was kosher.

The most substantial problem in the court's mind was the possibility that there would be rabbinic or inter-branch disagreements about *kashruth* which the state might attempt to referee. Some Orthodox groups, as friends of the court, thought that the state could, in fact, decide these issues, but the state itself disclaimed any such authority. That concession persuaded the majority that the statute would not lead to a state approved version of *Yoreh Deah*, that part of R. Joseph Karo's classic halakhic code, the *Shulhan Arukh*, dealing with *kashruth*. One judge dissented, urging that the law was invalid on its face.

The butcher has appealed to the New Jersey Supreme Court, which will consider the case in the next few months. A variety of Orthodox

20. State's Brief at p. 32.

21. *Ibid.*, at pp. 37-38.

22. In addition to the challenges listed in the text, plaintiffs made several other challenges, including one to the rationality of a regulatory presumption that the presence of non-kosher food in a kosher shop is evidence of an intent to sell the non-kosher food as kosher.

groups have joined in support of the kosher regulation's constitutionality, as has the Anti-Defamation League of B'nai B'rith. The ACLU sided with the butcher in challenging the law.

II

Are kosher food laws constitutional? At first glance, it would appear incongruous for government to have a state official charged with enforcing kosher food laws,²³ under a regime in which it is a matter of indifference to the government whether or not its citizens adhere to religious teachings, and, under which, government may not impose a religious orthodoxy on its citizens. From the point of view of the Jewish community, it would certainly be preferable if there were no need for recourse to governmental authorities to enforce *kashruth*. The very existence of such authority points to an inability and unwillingness of the community to police itself. Indeed, in recent years there has been a regrettable tendency to see in government a means of resolving all sorts of problems that are more properly the province of the community itself.²⁴ Some of this, of course, is little more than a desire by various groups to appear to be solving a problem. And, for politicians, kosher food legislation is a cheap way to do "something" for the Jewish community.

The matter, however, is not so simple. Very sophisticated criminal frauds may be beyond the power of an individual rabbi to detect, as would be the case if a slaughter house under kosher supervision doubled its production by operating a shadow non-kosher plant, but using the same kosher packaging. It is as legitimate for government to put a stop to this type of fraud as to stop fraud regarding the labelling of natural or organic foods.

Why could not a state prosecute, as a consumer fraud, the sale of "relics" of a medieval saint, when the "relics" turn out to be the bones of one of Mr. Perdue's freshly slaughtered chickens? Or what if a person sells bottles of holy water purportedly blessed by the Pope, when, in fact, it is tap-water from Hoboken, New Jersey? What about sand supposedly from Mecca or Jerusalem, when that sand is actually

23. New York and New Jersey both have such officials. Other states have no official specifically designated to enforce their kosher food laws, and apparently rely on officials with general enforcement powers over consumer fraud to prosecute kosher food law violations. It would be improper to limit that position to Orthodox Jews, as California did at one time. See, *Ehrlich v. Glasner*, 274 F. Supp. 11 (C.D. Cal. 1967). In one instance, however, Orthodox Jews sued to have the state hire a separate kosher food inspector. *Frankel v. Michigan Department of Agriculture*, 86-322-574 (Oakland County Circuit Ct. 1988). That suit was settled without any formal opinion being issued.

24. See, for example, N.Y. Gen. Bus. L. 349-a regulating the sale of non-kosher pharmacies and *mezuzot*.

from Coney Island?²⁵ All of these are frauds involving religion which turn on objective statements of fact.

The answer to all these hypotheticals is that government may act. In *U.S. v. Ballard*²⁶ the Supreme Court considered the prosecution of one Ballard who claimed (to his economic advantage) that he had received messages from St. Germain, a divine messenger who allegedly communicated with humanity only through Ballard. The indictment charged that this claim was false and was made with the purpose of securing “donations” to Ballard for services rendered as an intermediary between the gullible and St. Germain. The trial judge, departing from the indictment, charged the jury that it could not consider the truth of Ballard’s claims about his relationship with St. Germain, only whether or not Ballard asserted those claims in good faith. The Court of Appeals thought that the jury should have been asked, as charged in the indictment, whether Ballard’s theological statements were true.

The Supreme Court agreed with the trial judge. It upheld the judge’s charge to the jury, ruling that the truth or falsity of Ballard’s beliefs could not constitutionally be submitted to the jury, but only the question of whether he sincerely believed his claims. It is generally assumed that this case states the constitutional rule — that religious frauds may be prosecuted, but a conviction may be obtained only if the defendant did not sincerely believe in the validity of his or her claims.

All the consumer fraud cases hypothesized above would fit comfortably within the *Ballard* rule. So would a case in which a butcher was asked whether a particular piece of meat was from a cow or a pig, and intentionally misrepresented the actual fact, even if the purpose of the inquiry was to facilitate compliance with the kosher food laws. An inquiry whether a cow was stunned before being killed (prohibited in kosher slaughter), or whether it was killed by severing the carotid artery with a sharp knife (essential to kosher slaughter), could also sustain an action for fraud without constitutional difficulty.

The use of the word “kosher” is simply a shorthand for such statements. While there is certainly much unclarity at the edges of the laws of *kashruth*, certain principles are sufficiently clear — particularly to people in the trade — and sufficiently factual that there ought to be no constitutional difficulty in regulating them, at least if, as *Hygrade* holds, only intentional frauds are punished. The *Hygrade* gloss on the statute fits quite well with *Ballard*’s insistence that the truth of religious propositions cannot be questioned by the State, only the sincerity with which they are made.

25. See *In Re: Grand Jury* (Granowicz), 764 F. 2d 983 (3rd Cir. 1985), sustaining, against First Amendment challenge, the possibility of criminal prosecution for falsely representing that a book was based on actual interviews with the Pope.

26. 322 U.S. 78 (1944). The majority opinion was written by Justice Douglas, a passionate civil libertarian and a strong advocate of separation of church and state.

But this justification for the kosher food laws goes only so far. It does not permit the government to police the kosher food industry as a *mashgia'h* would, to insist on ever higher standards of *kashruth*, or to serve as a check on the diligence of a store's rabbinic supervision (provided, of course, that the supervision is genuine and not just a sham).

But such excesses seem endemic to kosher food enforcement. New York recently investigated a firm to determine if it was operating on the Sabbath.²⁷ While food prepared on the Sabbath is subject to certain halakhic restrictions, it is "kosher" food as the legislature defined the term. The kosher food laws are not "Blue Laws", nor can they be construed to incorporate every possible provision of the *Shulhan Arukh*. Nor would they permit the State to act as a guarantor of the *kashruth* of an establishment in the way that the Union of Orthodox Jewish Congregations does.

In the middle are far harder questions: What, for example, if the overwhelming consensus of halakhic opinion is to require a certain practice, but a minority rabbinic opinion permits a more relaxed practice? The consumer may reasonably assume that a butcher follows the majority practice, and hence is, in a sense, defrauded when the butcher, perhaps because it is cheaper to rely on the minority opinion, does so. But allowing the State to insist on the majority rule is to allow the State to control halakhic decision-making. That is both constitutionally and Jewishly unacceptable.

What of the fact that the typical kosher food law specifies "Orthodox Hebrew requirement?" Does not this effectively disenfranchise Reform and Conservative Judaism in violation of the Establishment Clause? That is a hard question. Interestingly, the local Conservative and Reform rabbinical organizations in the pending New Jersey case submitted a declaration that they did not perceive any slight to their branches of Judaism in the categorization of *kashruth* in this way.

Plainly enough, the State could not invoke the kosher food laws against someone who, in good faith reliance on the decision of the Conservative rabbinate, sold swordfish or gelatin as kosher. That case has not arisen, nor is it likely to, since those charged with enforcing these laws are aware of the practical and constitutional limits on their power. But the very mention of one rabbinic standard ("Orthodox") might well be enough to invalidate the law.

Proponents of the constitutionality of such laws argue that the definition is necessary because "Orthodox Hebrew" requirements are what most people who keep kosher understand by the word kosher. Since a clear definition of kosher is necessary for the law to operate validly at all, and the "Orthodox Hebrew" requirements most often represent

27. See JTA Community News Reporter (July 27, 1990).

the understanding and wish of the kosher consumer, its use in the statute should be constitutionally acceptable. In any event, as the New Jersey court noted, the extent of the halakhic differences between Reform and Conservative *kashruth* and "Orthodox Hebrew" *kashruth* are generally so unimportant as to be insignificant in almost all cases.

There is one last possible challenge to those laws. Jews are not the only group with religious dietary restrictions. Moslems and Seventh Day Adventists also have religious dietary laws. Yet, kosher laws extend their protections only to Jewish requirements. That discrimination is a serious and weighty argument against the constitutionality of such ordinances, but it is one of form, not substance; it is possible to write religiously neutral laws on this subject, and evade this difficulty. Thus, a proposal recently introduced by Representative Stephen Solarz, H.R. 5447, which is designed to ensure that food represented to be under clerical supervision is, in fact, under such supervision, would apply to all religions.

In sum, there is a place for laws against kosher food fraud, but their compass is significantly smaller than current practice would indicate. Thus, for example, there is little justification for government efforts to police supermarket cheese or meat slicers (a very common source of violations) or to determine whether kosher food plants operate on *Shabbat*. The need to contract the scope of the kosher food fraud laws ought not to be troublesome, because primary responsibility for ensuring the *kashruth* of food belongs on the Jewish community itself.

It is no objection to contracting the scope of kosher food enforcement that more non-kosher food will in fact be sold, because it is not government's role to prevent that from happening. In fact, the worst aspect of the kosher food laws is not the doubts about their constitutionality, but the fact that they lessen the responsibility of the rabbinate for kosher food enforcement, because it is easier to refer matters to the State kosher food officer than publicly to challenge the decisions of some other rabbi or challenge a local merchant.

III

Occasionally, one hears it said that rabbis are afraid to denounce those merchants who are less than scrupulous about the *kashruth* of the food they sell as kosher because they are afraid of being sued for libel. There is, of course, no guarantee that a particular statement will not result in a libel suit. Anyone with a lawyer and a filing fee (indeed, really only the latter) can file a lawsuit. But the odds of being sued *successfully* are practically nil, particularly if a rabbi has taken the most elementary steps to ensure the accuracy of his remarks.

In a Kentucky case, a customer noticed suspicious behavior in a kosher butcher store, which he reported to the local rabbi. The butcher

refused to cooperate in the investigation of the charges, and the rabbi urged that the *shohtim* (kosher slaughterhouses) not sell poultry to that butcher store until the matter was straightened out. The butcher sued the informant for libel, but the Kentucky Court of Appeals would have none of it. The court found that the report to the rabbi was privileged as a matter of law, and thus could not serve as the basis of a libel action.²⁸ Other reported cases have reached a similar result.

Courts will also not prevent a rabbinic group from refusing to accept the kosher certification of other rabbis, for such disputes are "one(s) of religious practice" and "would deprive the denominations themselves of interpretation of their own body of church policy."²⁹ And rabbis are free to deny certification to anyone not meeting any religious standards, including those involving matters other than *kashruth*.³⁰ In short, the rabbis are free to speak their minds on questions of *kashruth* without fear that their judgments will be second-guessed by secular courts.

The development of kosher food case law, then, is, on the whole, consistent with the law of church-state generally. It permits only limited government intervention, but allows private religious groups wide latitude to ensure *kashruth*. Whether the Jewish community would be better off without such laws, or with far narrower laws, is a very different question, but one which deserves far greater attention than it has received.

28. *Wolff v. Benovitz*, 301 Ky. 661, 132 S.W. 2d 730 (1945).

29. *United Kosher Butchers v. Associated Synagogues of Greater Boston*, 211 N.E. 2d 332 (1965). Accord, *Korn v. Rabbinical Council*, 148 Cal. App. 3d 441 (1983). *United Kosher Butchers* refused to pass on an anti-trust claim for the same reasons. Accord, *State v. Black*, 5 N.J. Misc. 2d 639, 138 A. 513 (Oyer & Terminer, Essex County, 1927). To the contrary is a doubtful decision, *Cabinet v. Shapiro*, 170 N.J. Super. 340, 86 A. 2d 314 (1952), which refused to dismiss an anti-trust challenge to a supervising authority's refusal to accept, as kosher, poultry slaughtered outside of its jurisdiction.

30. *Cohen v. Silver*, 277 Mass. 230, 178 N.E. 508 (1931).

Industrial Kashrut Supervision

MENACHEM GENACK

BASIC TO JEWISH RELIGIOUS LIFE IS THE OBSERVANCE of the laws of kashrut. Maimonides, the great codifier of halakhah, Jewish law, in his magnum opus, *Mishneh Torah*, subsumes the laws of *kashrut* (forbidden foods, laws of *shehitah*) together with the laws of forbidden sexual relations, in the book entitled *Kedushah*, Holiness. The word *kedushah* semantically means "separated." Holiness in Jewish thought and halakhah emerges through an act of separation. The Sabbath is holy, in that it is separated from the other days of the week. Jerusalem and the Temple are consecrated through their separation from the rest of Israel. By abstaining from forbidden foods we endow our daily life and mundane routine with sanctity.

The laws of *kashrut* are formulated in the Torah, which enumerates the forbidden species of animal and fowl as well as the requirement that the kosher species of animal be ritually slaughtered, by *shehitah*. In order to assure that the Biblical prohibitions not be violated, the Rabbis expanded on them and formulated further laws to preserve the existing Biblical law. A prime example of such a Rabbinic ordinance is the prohibition of eating meat together with milk. The Biblical prohibition is restricted only to eating meat that had been cooked with milk, but the Rabbis extended this prohibition and forbade the eating of meat together with milk. Additionally, they expanded the definition of meat to include fowl.

In addition to Rabbinic legislation, there exist many customs, *minhagim*, which are often unique to certain communities. An example of a *minhag* is the Ashkenazic tradition of not eating *kitniyot*, certain legumes, during the Passover season. Generally, Sephardic Jews never adopted this later custom of *kitniyot*, and, therefore, it is common for them, for example, to use rice at their Seder and all during the holiday.

The laws of *kashrut* in all their ramifications are complicated and voluminous. In modern times, superimposed on the intricacies of the laws of *kashrut* themselves is the complex nature of modern food technology. Today, food production has become big business, witness the recent buyout of Nabisco brands which represented the largest corporate buyout in American history. Furthermore, food production and manufacturing are at the very cutting edge of new technologies. In addition, there is enormous flux in the market, both in terms of sources

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of supply and new means of production. While, in the past, one could be relatively assured that a particular company would use a specific supplier on a consistent basis, now, because of economic changes, companies are constantly changing sources of supply to achieve efficiencies in manufacturing and to cut costs.

Historically, *kashrut* supervision was in the hands of the local rabbinates, and the situation was a relatively uncomplicated one in that the supervising rabbi had within his control the entire complement of ingredients which were used in this production. However, in the context of modern food manufacture, with its multinational scope and the large complexity of ingredients, that is impossible. No processing plant produces all of the ingredients that it requires to manufacture a product. Generally, it is dependent on other sources, which necessitates further supervision. To meet that broad need, the Union of Orthodox Jewish Congregations of America ("OU"), as well as other supervisory agencies, have attempted to expand, both in terms of the level of supervision and, also, in terms of computerizing the vast amount of information required properly to supervise kosher production. There are literally hundreds of thousands of different compounds and ingredients which are now used in food manufacturing.

The Union of Orthodox Jewish Congregations of America, which was founded in 1898, is the largest *kashrut* agency in the world, supervising over 1500 companies in the United States alone. This represents a supervision of in excess of 13,000 products. The ubiquitous OU symbol is an assurance that the product has been produced under the supervision of the Orthodox Union. The "K" symbol, which is often found on products, does not identify a particular *kashrut* agency or rabbi. By American law, a letter of the alphabet cannot be trademarked and, therefore, there is no trademark protection as relates to the use of the "K" symbol. In the United States, there are over fifty individual rabbis or organizations which can be represented by the letter "K" and, as a result, the standards which a "K" represents are not uniform but depend on the particular rabbi or organization standing behind it. New York State Law requires that any *kashrut* symbol, including the "K", must have some rabbi or supervising agency backing it, and that individual or organization must be registered with the Department of Agriculture of New York State.

The OU, which supervises approximately 70% of the kosher products in the United States, is a national organization involved in the supervision of companies that have a national or regional distribution. Local food establishments are generally not handled by the OU, whose policy is that those establishments are more effectively and efficiently handled by the local rabbinate.

The OU is associated with the Rabbinical Council of America, which determines its *kashrut* guidelines in terms of Jewish Law. The governing

body of the Kashrut Department is the Joint Kashrut Commission, which is a committee of prominent laymen in conjunction with a delegation of the Rabbinic Kashrut Commission of the Rabbinical Council of America. Jointly, they establish fundamental policies of the OU.

Each company which receives OU supervision adheres to *kashrut* regulations which are established in a contract between that company and the OU. The level of supervision of a company is determined by the nature of the product manufactured. If the product is relatively innocuous, the level of supervision will be limited, but those products whose *kashrut* status is complicated by their special halakhic status, like cheese, wine and meat, require constant supervision.

One of the most common questions asked by consumers and rabbis alike is: Why is kosher supervision really required? Given the detailed labelling laws which exist, a careful examination of the ingredient declaration should be sufficient to determine the *kashrut* acceptability of any given product. There are several reasons why this is certainly not the case, and why the label cannot be used as a guide to the *kashrut* of the product.

A major concern directly relating to the kosher status of a product is the equipment used in its manufacture. In the industrial arena, manufacturing facilities are used for the production of a wide variety of products. Indeed, the economic push for consolidation motivates companies to minimize the duplication of manufacturing sites wherever possible. For this reason, a particular piece of equipment may be utilized for the production of numerous dissimilar products. Often, products which contain non-kosher ingredients are produced on the same equipment or lines as a product which may be kosher from an ingredient point of view. It is obvious that an ingredient panel can give us no clue as to the roster of products which may share common equipment. The laws of *kashrut* are quite clear as to the necessity and specifications for purging utensils which have been used in conjunction with non-kosher food. The cleaning procedures that companies employ do not necessarily meet the strictures of kosherization and, thus, products subsequently produced are rendered non-kosher as well.

In addition, the labelling rules allow for certain ambiguities. The nomenclature used for listing ingredients often gives no hint of the actual ingredients being used. For example, the listing of "natural cherry flavor" is commonly found in scores of products in the marketplace. This listing, however, does not disclose to us the myriad ingredients that this particular item may contain. Oil of cognac, a derivative of non-kosher wine, as well as animal derivatives, could very possibly be a part of "natural cherry flavor," but the kosher consumer will be none the wiser when he glances at the label. Vegetable shortening is another good example. Very often the innocent blurb of "vegetable shortening" can conceal serious *kashrut* concerns. Many varieties of vegetable short-

ening contain considerable percentages of emulsifiers which may be animal derived. Even “pure” vegetable shortening may be refined on equipment which has been used for the rendering of lard or other animal fats. The same is true for “vegetable oil.” Again, the label offers no information regarding these critical details.

Finally, there are ingredients used by the food industry which need not be listed at all. For example, manufacturers of hard candy, such as lollipops, use release agents on the surfaces of equipment used for the molding and cooling of these and other confections. Reflect on the difficulty that the manufacturer would have if these release agents were not used. Imagine the specter of removing thousands of these candies from the equipment used to cool and harden them. The presence of the release agent causes the candies to slide off of the production equipment with ease and move on to packaging. These release aids are manufactured from fats and oils, and many are of animal origin. Their use in conjunction with a product is a potential hazard from a *kashrut* point of view. However, the manufacturer need not list this item on the label since it is simply not an ingredient in the product but, rather, a processing aid. The absence of processing aids on the label of a product inadvertently but totally hampers our ability to determine its kosher status. It should be noted that this is not just a factor inherent in the lollipop industry but cuts broadly across the entire gamut of food production.

The above concerns are most clearly brought into focus when one realizes the strides that the food industry has made in the “cosmetics” of food production. Taste, texture, flavor, color, and shelf-life, are only a few of the areas with which manufacturers are acutely concerned. The Research and Development departments of the industry spend huge sums of money in order to create specialized substances which improve the marketability of food products and make them more palatable to the consumer. These ingredients come from a variety of sources, many of which revolve around basic *kashrut* issues. The derivation, for example, of enzymes used in food production has recently been the center of attention for those involved in *kashrut* work. The sources from which these enzymes are isolated can be of critical concern in verifying the kosher status of a product for year-round use and, especially, for Passover. Meat tenderizers can be diluted or standardized with lactose — a dairy ingredient. Soya flour can be treated with an enzyme which is isolated from the stomach of a swine. The list goes on and on. It is only reliable investigation, monitoring, and supervision, which can guarantee that the product in question has been produced in accordance with the laws of *kashrut*.

Flavors which seem innocuous may, from a *kashrut* perspective, be problematic, since they may contain ingredients which are non-kosher. Common non-kosher components in flavors are civet, derived from the

civet cat, or castoreum, an extract of beavers. In addition, wine or oil of cognac are common ingredients of flavors, therefore requiring close supervision to assure that the wine used is kosher. Mono- and diglycerides can be compounded either from vegetable sources or from animal fats, thus necessitating supervision. Glycerin can be produced from either vegetable or animal sources, requiring that the glycerin used in kosher products be carefully selected to meet kosher requirements.

The area requiring the greatest supervision is meat. In order for meat to be kosher, the animal must be properly slaughtered. In addition, subsequent to the slaughtering — which is done by cutting the trachea and the esophagus in a steady, continuous stroke by a trained ritual slaughterer — the lungs of the animal must be checked to make sure that there are no punctures or other abnormalities there. The expression, *glatt*, which, in Yiddish, means smooth, means that there are no adhesions of any kind to the lungs, providing a level of *kashrut* in meat that is sought by many pious Jews. Certain adhesions may render an animal non-kosher, *treife*. It is a responsibility of the *bodek*, who does the internal examination of the animal, to determine if the animal may properly be classified as *glatt*, without any adhesions, or merely kosher, with adhesions, but not of the variety that render the animal non-kosher, or *treife*.

Because there is a significant differential in cost between kosher and non-kosher meat, the level of supervision that is required is significant. If one is careless, meat that is properly slaughtered may go through distribution channels which do not protect the integrity of the kosher symbol, and non-kosher meat may be substituted. In addition, certain veins and nerves as well as forbidden fats must be purged from the meat before it can be considered kosher. Then the meat must be properly soaked and salted to remove the blood.

An area of *kashrut* law which requires special stringency relates to Passover. Generally speaking, if a small percentage of non-kosher product is inadvertently mixed with kosher food, in a ratio of over 60 to one, the non-kosher food is considered nullified. However, as relates to *hamez*, leavened product that is prohibited on Passover, even the smallest amount in any mixture will make the product unfit for Passover.

Rabbi Joseph B. Soloveitchik, the great Talmudic scholar, once related that in the small European town in which he was brought up, Chaslovitch, during the season before Passover, the Gentiles — who were naturally aware of the severity of the laws of *hamez* — began throwing pieces of bread into some of the wells, thereby making the water unfit for use during Passover. Rabbi Soloveitchik's father, Reb Mosheh, advised that any well which was found to have had *hamez* should have ink thrown into it, making it unfit not only for the Jews but for the

Gentiles as well. In short order, the plague of *hamez*-contaminated wells ended.

The essence of the matzoh product is that it is produced with care and alacrity, not permitting the matzoh to rise. And it is that spirit of precision which animates the entire Passover season in both law and tradition.

Kashrut in America, like food production in general, has come to represent big business. Companies are no longer unsophisticated about the meaning of kosher. They no longer define kosher as food having been blessed by a rabbi, but understand that *kashrut* is determined by the means of manufacture and the ingredients that are used. This has made kosher products available to the kosher consumer on the broadest scale possible.

Kashrut has always been a complex area, in that it represents the nexus of Jewish law and tradition, as well as economics and politics. With its sense of discipline and its connection between the spiritual and the mundane, *kashrut*, more than any other Jewish ritual, defines the Jewish home and thereby guarantees the eternity of the Jewish people.

A Festschrift in Honor
of

Dr. Robert Gordis

is planned for Oct. 1991

Colleagues, Students, and Admirers
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Looking in on Kosher Supervision of the Food Industry

JOE M. REGENSTEIN and CARRIE E. REGENSTEIN

THE JEWISH DIETARY LAWS, *KASHRUT*, occupy a central role in the religious life of the observant Jew. Although there are many other laws that affect a traditional Jew's daily life, the laws relating to kosher foods stand out, in part because of their significant impact on the non-Jewish community. Many sectors of the food industry, including production, distribution, and marketing, routinely take these laws into account as they carry out their business activities. Not surprisingly, however, non-Jewish food industry management may understand how these laws specifically affect their own product without understanding the religious significance that they hold for the kosher consumer, the depth of concern of this consumer group, or the resulting vocabulary used by these consumers' leaders, the rabbis.

In recent years, the impact of the kosher dietary laws on the food industry has grown with the increased consumer demand. A number of major companies have switched to producing kosher foods, witness the growth of kosher items in the marketplace from about 1000 to 18,000 in the last decade. One estimate suggests that 30% of the products in a typical supermarket in the northeast United States may be kosher.¹ This is a \$1.5 billion market involving about 6 million people, of whom about 1.5 million are Jews. *Ad Week* has cited kosher food as one of the "hottest" products of 1989.²

This paper is a report to the Jewish community on recent issues in the world of kosher foods and supervision, based primarily on the activities of the Kosher Foods Program at Cornell University. It is divided into three topic areas: the food industry, the kosher supervisory agencies, and the kosher consumer.

1. J. Delaney, "What's New in Kosher Foods," *New York Times* (Dec. 31, 1989), Section F, p. 13.

2. M. Lubinsky, "Interest in Kosher Products Skyrocketing," *Moment*, Feb., 1990:16.

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THE FOOD INDUSTRY

Education

Two papers explaining the meaning, origins, and practical aspects of carrying out the kosher laws, have been published in the official magazine of the Institute of Food Technologists (IFT), the professional organization of food scientists and food technologists in the United States.³ A special booklet, "Old Laws in a New Market — The Kosher Dietary Laws for Seafood Processors," has been prepared for that industry.⁴ This is the first time that an official list of kosher and non-kosher fish was published for distribution beyond the kosher observant community, and it was done with the permission of the Union of Orthodox Jewish Congregations of America (Circle U), the original publisher of the list,⁵ and Dr. James W. Atz at the Museum of Natural History in New York, the author of the list.⁶

When presenting the kosher dietary laws to the food industry and to the non-kosher public, the following quotation has been used effectively as a frame of reference.

"And ye shall be men of a holy calling unto Me, and ye shall not eat any meat that is torn in the field" (Exodus XXII:30). Holiness or self-sanctification is a moral term; it is identical with . . . moral freedom or moral autonomy. Its aim is the complete self-mastery of man.

To the superficial observer it seems that men who do not obey the law are freer than law-abiding men, because they can follow their own inclinations. In reality, however, such men are subject to the most cruel bondage; they are slaves of their own instincts, impulses and desires. The first step towards emancipation from the tyranny of animal inclinations in man is, therefore, a voluntary submission to the moral law. The constraint of law is the beginning of human freedom Thus, the fundamental idea of Jewish ethics, holiness, is inseparably connected with the idea of Law; and the dietary laws occupy a central position in that system of moral discipline which is the basis of all Jewish laws.

The three strongest natural instincts in man are the impulses of food, sex, and acquisition. Judaism does not aim at the destruction of these impulses, but at their control and indeed their sanctification. It is the law which spiritualizes these instincts and transfigures them into legitimate joys of life.⁷

3. J. M. Regenstein and C.E. Regenstein, "An Introduction to the Kosher (Dietary) Laws for Food Scientists and Food Processors," *Food Tech.* (1979), 33(1):89-99, and J.M. Regenstein, and C.E. Regenstein, "The Kosher Dietary Laws and Their Implementation in the Food Industry," *Food Tech.* (1988), 42(6):86, 88-94.

4. J.M. Regenstein and C.E. Regenstein, *New York Sea Grant Bulletin* (1981).

5. Union of Orthodox Jewish Congregations of America and the Rabbinical Council of America, *Kashruth, Handbook for Home and School* (New York: UOJCA, 1972).

6. A more recent version of the list, including many of the newer "exotic" foreign fish species, appeared in Rabbi Yaakov Lipschutz's excellent new book, *Kashruth: A Comprehensive Background and Reference Guide to the Principles of Kashruth* (Brooklyn, NY: Mesorah Publications Ltd., 1989).

7. I. Grunfeld, *The Jewish Dietary Laws* (London: Soncino Press, 1972).

It is important to set the kosher laws in the context of Jewish religious thinking rather than to convey or allow the idea that the laws are solely designed for health purposes, e.g., the prohibition against eating pork because it might be a source of trichinosis. (Note: mummified pork has been isolated from the pyramids of Egypt and found to be free of any signs of trichinosis.)

Problem-Solving

Food companies need assistance in dealing with specific problems that they have in meeting, or planning to meet, kosher standards. Examples include the requirements that they be kosher,⁸ the requirements for kosher bacterial growth media, the problem of transporting cooked tuna parts so that they can maintain their kosher status, and the requirements for kosher fish oil and fish skins. These skins are used to produce a kosher fish gelatin, which would avoid many of the problems associated with animal gelatin or the technical problems associated with plant-derived gums.

The use of animal-derived gelatin in kosher foods is controversial, and a whole book has been written on the subject.⁹ This text defends the position that gelatin is kosher even if obtained from non-kosher-killed beef animals. At least a few Orthodox rabbis (who supervise such products) even permit pork gelatin to receive kosher certification. There are, of course, halakhic (Jewish law) bases for all of these points of view. However, in this country, virtually all of the other kosher certification organizations do not permit the use of any gelatin, whereas, in Israel, the rabbinate allows some gelatin prepared from dry beef bones (not kosher slaughtered) to be considered kosher.¹⁰ The availability of a fish gelatin might permit its use in some, but not all products, where beef or pork gelatin is currently used.

As the United States reevaluates the role of pesticides in its agricultural practices, the kosher community continues to reexamine its standards for acceptable produce. The secular movement towards tolerating more insects in our food supply is contrary to the kosher mandate not to eat insects. It is important that the kosher community understand techniques like integrated pest management, which helps farmers use less pesticide by allowing a limited amount of insect infestation to occur,¹¹ while, at the same time, the industry may well find that new opportunities exist for niche marketing of pest-free produce to the kosher community.

8. J.M. Regenstein and C.E. Regenstein, "Looking In," *Kashrus* (1990), 10(3):42.

9. D.I. Sheinkopf, *Gelatin in Jewish Law* (New York: Bloch Publishing Co., 1982).

10. J.M. Regenstein and C.E. Regenstein, "Gelatin," *Kashrus* (1987), 8(1):20-21.

11. J.M. Regenstein and C.E. Regenstein, "Looking In: Insect Infestation," *Kashrus* (1988), 8(3):30-32.

An example of an “insect problem” occurred with the sauerkraut industry. Some cabbages may contain an insect called the onion thrip, which is just large enough to be visible, so that its presence is unacceptable to the kosher consumer. Research at Cornell revealed that the thrips fall off of the cabbage during the manufacture of sauerkraut; therefore, there are no thrips in the final product.¹² Thus, the problem was resolved by bringing appropriate parties together to discuss the issues; the result is that kosher sauerkraut continues to be available.

Vinegar: A Case Study

The story begins in the 1970s, when the U.S. Food and Drug Administration (FDA) approved the use of petrochemically-derived alcohol as an allowable feedstock (ingredient) for the fermentation of alcohol to vinegar. The petrochemical alcohol met all health and safety requirements for food, and was slightly cheaper than other sources of alcohol. (Chemically, acetic acid cannot be termed vinegar on a label; the transition from alcohol to vinegar must be done by fermentation.) Then, in the fall of 1985, the State of New York became aware that, although its agricultural marketing laws required that vinegar be made only from alcohol derived from specifically identified agricultural crops, vinegar plants in New York State were using petrochemically-derived alcohol. By enforcing these laws in 1985, the state disrupted the normal flow of alcohol used for vinegar production, and companies scrambled to find new sources to replace the no longer usable petrochemical alcohol.

The petrochemical alcohol-fermented-into-vinegar was particularly popular in the kosher community because it could be used for Passover production without extra cost. (Cider vinegar costs more and also adds a different taste.) Thus, many Passover products — and other year-round kosher products — had, over the years, switched to using the petrochemically-derived vinegar. The major producer of vinegar in New York State tried to get the New York Department of Agriculture and Markets to postpone enforcement of the laws requiring agriculturally derived vinegar until the law could be changed. Unfortunately, it became clear that the Department would not budge, so the legislative route was taken. Thankfully, a revision of the state's vinegar laws was a priority of one of the large statewide trade associations, which worked with Jewish community groups in getting the legislation submitted in December, 1985. It was passed and signed by the Governor about one week before Passover, 1986.

But, just before Passover of that year, it was discovered that certain overseas shipments of alcohol might have led to the production of vinegar of “questionable” kosher status. The announcement and concern

12. A.M. Shelton, J.R. Stamer, W.T. Wilsey, B.O. Stoyla, and J.T. Andaloro, “Onion Thrips (*Thysanoptera thripidae*) Damage and Contamination of Sauerkraut,” *J. Econ. Entomol.* (1982), 75:492-494.

over this vinegar was apparently the subject of numerous pulpit sermons during that Passover. How could such a thing happen?

Apparently, three questionable shipments of alcohol were added to a large storage tank of kosher alcohol used mainly for vinegar production. Two of the shipments were marc alcohol and one was non-kosher wine alcohol. Wine alcohol is always subject to the *kashrut*-related "Laws of Separation"¹³ (the laws designed to discourage Jews from socializing with non-Jews). The kosher status of the marc alcohol remains unclear to this day. However, because the alcohols were pumped into tanks already containing some kosher alcohol, the issue of the nullification of the incoming stream by the already existing volume of alcohol in the tank also required halakhic interpretation.

What is marc alcohol? After the grape juice is pressed out of the grapes, a grape pomace (seeds, skins, stems, etc.) remains. The pomace still contains a usable amount of residual sugar. In France, this sugar is dissolved with warm water and the resulting liquid is fermented into alcohol. This alcohol, which contains high levels of methanol (the toxic alcohol often used as a fuel and, sometimes, with unfortunate consequences, is drunk by derelicts), is then carefully removed. At this stage, the high level of toxic methanol may make the product "unfit" as a food, which may affect its halakhic status. One rabbi has published a responsum on the subject of marc alcohol, concluding that the product is kosher, but the issue remains open because it is not clear that other rabbis have accepted this responsum. Because a number of halakhic questions remained, the alcohol in the storage tank was never declared not kosher, but simply "of questionable" kosher status.

Based on the best information available at the time, the rabbinical supervision organizations organized a recall of many kosher products, particularly those containing vinegar. Many lists of products of questionable kosher status were circulated in the Jewish press, and retailers were asked to accept returns of these products. It is estimated that a million gallons of "questionable" vinegar ended up in finished products. This was a major incident in the Jewish community, and is still sometimes referred to as "VinegarGate."

Our own analysis of how the incident may have occurred is as follows: because of the activities in New York State, the normal networks of alcohol for vinegar supplies were stretched, so new product sources were needed and sought by the alcohol suppliers. Since it was during the season when Passover production takes place, the emphasis was on assuring that no grain alcohol got into the kosher supply, and, thus, the grape (and marc) alcohol was inadvertently allowed through.

The Vinegar Institute, the trade association of vinegar manufac-

13. J.M. Regenstien and C.E. Regenstien, "... And Authors Respond," *Food Tech.* (1979), 33(4):28,31, and J.M. Regenstien and C.E. Regenstien, "The Kosher Dietary Laws and Their Implementation in the Food Industry," *Food Tech.* (1988), 42(6):86, 88-94.

turers, has since taken an active role in improving the situation with respect to its members' production of kosher products. First, the Institute requested (and received) kosher education programs for the vinegar companies' technical staff and for the Institute's total membership. Two new initiatives have developed out of this interaction. The first, was to write a typical industrial production guideline for vinegar. After two years, the document — having been reviewed by about twenty rabbis, representing most of the major kosher supervision agencies — was published in both *Kashrus* magazine and *Food Technology*¹⁴ as an example of what can be done when the food industry and the kosher supervision agencies work together.

Laboratory Testing

The second initiative is to identify scientifically the source of alcohol or vinegar. Using techniques such as mass spectroscopy and nuclear magnetic resonance spectroscopy, it is possible, for example, to distinguish among grape alcohol, grain alcohol, and petrochemical alcohol. The Vinegar Institute, and a commercial testing laboratory in France that specializes in these spectroscopic techniques, have continued their effort to develop a useful monitoring system that would ultimately be of benefit both to the industry and to the kosher community. Since the vinegar industry is also interested in detecting chemically produced acetic acid that is mislabeled as vinegar, there should be enough samples to make the testing process economically viable.

Such scientific testing and laboratory analysis should be coordinated by a central body 1) to ensure the scientific integrity of the results (e.g., by routinely sending out coded test samples of known composition to validate the laboratory's work) and 2) to prevent unnecessary duplication of testing as a product moves through the distribution chain. Such a role could be undertaken by the Association of Communal Kashrus Organizations (ACKO), and, by coordinating these tests, ACKO might also generate funds that it could use for its other activities.

Another obvious area for laboratory testing is salting. The State of New York tests kosher meat and poultry products to determine if they have been soaked and salted properly. The idea is to compare new samples with existing data on products that have been salted and soaked under various circumstances. Unfortunately, the State's data base is very limited, depending on samples seized by the Kosher Enforcement Bureau and limited experimental work. The effect of a wider range of salting and soaking practices needs to be systematically examined. Furthermore, there is a need to distinguish between meat that has been properly soaked and salted, and meat that has been soaked

14. J.M. Regenstein and C.E. Regenstein, "Vinegar — A Guide for the Industry," *Kashrus* (1989), 10(1):32-35 and *Food Techn.* (1990), 44(7):90-93.

in brine, which is the latest issue in the industry! This is a very challenging technical question whose solution requires resources.

Eventually, a number of other testing methods should become part of the Manual of Methods of the Association of Official Analytical Chemists (AOAC), whose methods are legally recognized tests that can be enforced in a court of law. Some of the other areas for laboratory testing in the service of *kashrut* would include the ability to determine the presence of animal fat in products or the presence of dairy ingredients. We would expect that sophisticated sampling techniques would provide answers to many questions related to kosher enforcement.

Salt-testing played an important role in a recent case in Illinois, when it was determined that a company was selling non-kosher chickens as kosher. However, some initial confusion could have been prevented if data had already existed on proper scientific controls and expected values of salt in various cuts of meat and poultry.

Such laboratory tests do *not* substitute for rabbinical supervision and judgment. However, they do permit supervising rabbis to check on points that are not always obvious during a plant visit. The knowledge that supervising rabbis are using such methods would itself serve halakhically as a deterrent to the food industry.

Most rabbinical organizations require that animal-derived rennin (the coagulating agent used to make the cheese curd) must come from kosher slaughtered and prepared calves. Otherwise, microbial (bacterial) rennin must be used to make a kosher product. For practical reasons, most kosher cheeses are made with microbial rennin. Because the halakhic laws of separation apply, cheese is not kosher unless a Jew adds the rennin or otherwise participates in the cheese manufacture. Nevertheless, it is possible for the whey, which is separated out from the cheese curd, to be kosher even if the cheese is not, if the cooking temperature of the curd does not reach 120° F. while the whey is still present. (This is important for the non-kosher cheese industry seeking to find uses for their whey in other products, and for *kashrut* supervisors of such uses.) The exact temperature remains the subject of debate; it may be higher where the whey is ultimately intended to be used as a bacterial medium rather than as a food or food ingredient for direct human consumption.¹⁵

In the coming years, the issue of kosher rennin will become involved with the newly emerging area of biotechnology and genetic engineering. How will the rabbis rule on these new materials?¹⁶ At this writing, at least three companies have petitioned the FDA for approval of a genetically engineered rennin (chymosin is the proper name of the enzyme involved in cheese clotting), and one has received approval this year.

15. J.M. Regenstein and C.E. Regenstein, "Looking In," *Kashrus* (1990), 10(3):42.

16. J.M. Regenstein and C.E. Regenstein, "Biotechnology and Genetic Engineering of Foods," *Kashrus* (1987), 7(5):30-32.

At least one company has advertised that when the product becomes available it will be kosher. Apparently, the circle U has accepted this new technology.

Readers should recognize the limitations of the FDA. At this time, severe understaffing makes them unable fully to enforce their own laws and regulations, thus creating a problem for the kosher consumer requiring information related, e.g., to mislabelings. What can the kosher consumer do when a product is marked as "Kosher-Pareve" and the ingredients statement says "whey?" If the product does contain whey, it is probably dairy and the kosher supervisory agency should be contacted. There are, however, some circumstances where the above marking might be accurate, e.g., if a company adds a small amount of whey (less than $\frac{1}{60}$) without informing the supervising rabbis. If the product does not contain whey, then a label saying that it does may be a violation of federal law — but the FDA may not choose to do anything about it. Some of the slack in enforcement should be picked up by the states — especially in a state like New York, which already has a Kosher Enforcement Bureau.

THE KOSHER SUPERVISORY AGENCIES

There are a great number of kosher supervising agencies. Readers undoubtedly recognize the *hekhsher* (symbols of kosher approval) associated with organizations such as the Union of Orthodox Jewish Congregations (circle U), the Organized Kashruth Laboratories (circle K), and the Kof K. There are numerous other labels, including the generic K, found on products that represent the kosher approval of an individual rabbi. And, of course, numerous rabbis need information to answer the kosher questions of their congregants. *Mashgi'im* (general kosher supervisors in plants and food service establishments) and *shohtim* (those who perform ritual slaughter) must be included in a number of significant matters.

Just as the food industry needs help in understanding the framework of Jewish kosher thinking, so this target audience requires information about the methods and vocabulary of the food industry. It can be difficult to determine the kosher status of a food or ingredient with an unrecognized name of six syllables. There are a number of ways of providing these rabbis with the information they need.¹⁷ It is also important that the rabbis 1) provide the food industry with prompt responses to inquiries; 2) provide clear instructions for the consistent enforcement of regulations, i.e., a single supervision agency should treat all of its clients the same way; 3) attempt to learn more about food

17. J.M. Regenstein, "Telling the Food Industry About Kosher," *Kashrus* (1986), 6(4):59. Some of the questions are quite challenging, e.g., a recent one concerning the marketing of tuna in the 13th century!

science so that they can do a better job; 4) provide the industry with clearer statements on their policies on various subjects such as whey; and 5) minimize “politics” and cross-fighting in the kosher supervisory system. This is essential if the current system of cross-acceptance of *hekhsherim* is to succeed.¹⁸

* * *

An important issue that needs to be addressed by the kosher community is the area of *shehitah*, kosher slaughter. The animal welfare movement, which probably has as its goal the elimination of all animal slaughter, has attacked — and continues to attack — many aspects of meat handling, and one target has been kosher slaughter.

Kosher slaughter — like *halal* (or Moslem slaughter) — while a ritual requirement, is also supposed to be humane. However, standards of defining this humaneness have changed over the years, and the kosher community has not kept apace. The shackling and hoisting of live, unstunned animals prior to slaughter is no longer the most acceptable “humane” practice available. Alternatives can and should be used in both small and large plants. The following excerpt from a report by the authors published last year makes this clear.¹⁹

We recently became aware of the outstanding efforts done by Temple Grandin (Grandin Livestock Systems) to improve the handling of cattle for kosher slaughter . . .

In [her] own words:

“Observations of kosher calf slaughter [on a new system at Utica Veal, Marcy, NY] indicated that a skilled shochet could cause over 95% of the calves to collapse immediately like animals shot with a captive bolt [a so-called humane way of preparing animals for slaughter]. Ninety-five percent perfect effectiveness is similar in performance to stunning [another allegedly humane method]. [With] a less skilled shochet . . . many calves retained a righting reflex . . . Fortunately, the less skilled shochet quickly learned to induce immediate collapse when he could see the results of poor cutting technique. A system which allows the shochet to easily observe the animal's reactions has a great potential to improve the humaneness of kosher slaughter. The old shackle hoist method concealed the calf's reactions and the shochet was unable to determine the effectiveness of the cut . . .

“In western Europe and Canada, shackling and hoisting of fully conscious live animals for ritual slaughter is forbidden. Plants that conduct ritual slaughter in these countries are required to hold the animal in a restraining device while the throat is cut. Hoisting by the hind leg is not permitted until after the throat has been cut. But the practice of shackling and hoisting fully conscious livestock for ritual slaughter is permitted in the United States. This violates the humane religious principles of ritual slaughter and greatly endangers the safety of plant employees, many of whom are injured by kicking, thrashing animals.

“Shackling and hoisting of conscious animals for ritual slaughter is an area of our profession in need of major housecleaning.

18. J.M. Regenstein and C.E. Regenstein, “Looking In,” *Kashrus* (1989), 9(4):26-27.

19. J.M. Regenstein and C.E. Regenstein, “Looking In,” *Kashrus* (1989), 9(4):26-27.

"Many plants conducting religious slaughter use proper restraining devices and they are to be commended. Companies still using the shackle hoist need to change their ways. Many systems are available for humane ritual slaughter of both large and small animals . . .

"Both Jewish and Moslem teachings emphasize the importance of humane treatment of animals. Causing pain to the animal is a violation of religious teachings."

Dr. Grandin has said what needs to be said. The kosher community must evaluate its continued acceptance of shackling and hoisting. Shall we begin the process by considering lobbying for legislative change?

To turn to other miscellaneous matters of kosher supervision, many of the larger kosher supervisory agencies have manuals for *mashgi'him*, which should include information on personal sanitation, food sanitation, and fire safety.²⁰ The advent of the blow torch, for example, as a way to *kasher* stoves clearly presents a potential fire hazard.

Questions concerning the best way to remove insects from fruits and vegetables must be addressed. Various methods involving water, salt water, and vinegar and water, are currently recommended to both *mashgi'him* and kosher consumers. Clarification of their effectiveness is now being pursued.

* * *

One promising development in recent years has been the establishment of the Association of Communal Kashruth Organizations (ACKO) as a place where the rabbis can meet and discuss their common problems, share information, review the standards used by the different groups, and establish an electronic bulletin board (i.e., via computer) for quickly alerting each other about problems. It is to be hoped that ACKO will take the lead in making the standards of the various kosher supervisory organizations widely known, since the modern kosher consumer and the food industry have a "right-to-know" these standards — and, indeed, a "need to know."

Perhaps ACKO should try to mediate between communal kosher supervision organizations and certain private fee-for-service kosher organizations. The communal organizations argue that they have a higher moral standing because they earn no personal profits. However, their funds are often used for other community purposes. On the other hand, the private kosher supervision services are highly motivated to give good and efficient service, and need earn only enough money to meet their personal "profit" goals. Both groups should work together for the common good.

THE KOSHER CONSUMER

In 1985, Governor Mario Cuomo created the New York State Ko-

20. J.M. Regenstein and D.L. Scott, *Sanitation and Fire Safety for Mashgiachs* (Ithaca, NY: Dept. of Food Science, Cornell University, 1989).

sher Food Advisory Council to address issues of concern to the kosher consumer. One of the main thrusts of this Council's activities has been the examination of kosher food pricing. To this end, it has organized various kosher food pricing surveys, the results of which have been reported in the press. It is hoped that the mere act of monitoring these prices will make merchants sensitive to the needs of kosher consumers.

In fairness to the merchants, a few members of the Council visited a kosher poultry plant and a non-kosher poultry plant for a better understanding of the price disparities between the two types of products.²¹ A consumer booklet, "A Shopping Guide for the Kosher Consumer," was prepared for the Council in conjunction with the Governor's office,²² and its goal is to assist consumers in making wiser decisions concerning kosher food purchases and to provide information about what to do in case of problems. Topics include:

- How to know when a product is kosher?
- Are all kosher products marked with a kosher certification?
- How to determine if a product is meat, dairy or *pareve*?
- Kosher meat and poultry.
- The price of kosher meat and poultry.
- Kosher food and health considerations.

The booklet is not a listing of kosher food products.

The aforementioned work on kosher poultry pricing was a follow-up to an earlier study discussing "Sources of Additional Costs in Producing Kosher Poultry,"²³ which, in turn, was a response to legislative hearings held in 1983 in New York State. At that time, a kosher poultry producer indicated that it cost approximately \$0.25 per pound extra to *produce* kosher poultry, i.e., the extra cost at the time when the poultry left the plant. This differential did not include the inefficiencies, such as labor, inherent in kosher poultry marketing, delivery, and inventory. These additional costs can be significant, and account for the significantly higher price of kosher versus non-kosher poultry. Many of these inefficiencies occur at the retail level. The concerned kosher consumer should consider doing more comparative shopping to obtain the best prices for the product meeting his or her kosher standard. The figures

21. The results were written up as part of a booklet available to consumers. M. Ratzersdorfer, J.M. Regenstein, and L.M. Letson. Appendix 5: "Poultry Plant Visits" in *A Shopping Guide for the Kosher Consumer* (Albany, NY: NY Consumer Protection Board, 1988).

22. J.M. Regenstein, C.E. Regenstein, and L. Letson, *A Shopping Guide for the Kosher Consumer*, Prepared for Governor Cuomo's Kosher Food Advisory Council in conjunction with The New York State Consumer Protection Board (1989), 2nd edition. Copies are available from the New York State Consumer Protection Board, 99 Washington Ave., Room 1020, Albany, NY 12210.

23. J.M. Regenstein and C.E. Regenstein, *Sources of Additional Costs in Producing Kosher Foods: A Case Study Using Poultry* (Ithaca: Department of Poultry and Avian Sciences Publication. Cornell University, 1984).

used at the hearings were quoted by a poultry industry spokesperson. However, the actual data were not generated by the company itself, but, rather, by a post-doctoral associate in the Poultry and Avian Sciences Department at Cornell. These figures were carefully reviewed and were quite reasonable; still, the kosher community remained wary of the merchants. Why? Perhaps because rabbinical testimony presented at the hearings indicated that the price differential in production was no more than \$0.10 per bird. Where do the other costs come from? Part of the answer, suggested above, lies in the cost of retailing.

Many kosher consumers insist on buying their meat and poultry from a local kosher butcher. However, maintaining a small business today is difficult. Neighboring supermarkets can often sell equivalent products at lower prices, but, because the kosher butcher's meat is not pre-prepared or pre-packaged, he incurs extra expenses for supervision by the rabbinical authorities.

Even though kosher consumers may prefer to frequent a local butcher shop, still, many of them distrust all kosher butchers. Clearly, the kosher community must find a balance between the desire to observe *kashrut* and a willingness to pay for the inevitable costs that are incurred for related services. Leaders of the kosher community could work with the enforcement agencies in a two-pronged effort to 1) educate consumers about the economics of kosher business operations; and 2) help the kosher butcher learn to run his shop more efficiently — including improving his marketing, possibly by attracting non-kosher customers. Since kosher meat has an image of being more rigorously supervised, this could be translated into increased sales.

The Beef Industry Council of the National Livestock and Meat Board has decided to produce an information and recipe booklet for the kosher consumer, which will probably review the federal government's general recommendations concerning diet, nutrition, and health, and place the proper eating of meat into the context of these governmental health suggestions. It should also provide the kosher consumer, particularly the younger generation, with additional information about important aspects of dealing with kosher meat, such as kosher slaughter and proper *kashering* of meat procedures. The booklet should also provide kosher butchers with a useful tool for marketing their merchandise.

Labeling

"Keeping kosher" would be a lot easier if all products were clearly and consistently marked as to their kosher status, and the symbols used did not lead to so much confusion for the consumer. Legislative assistance would probably help us achieve a system that specifically labels each kosher product *pareve*, dairy, meat, dairy equipment (i.e., *pareve* products that have been manufactured on equipment that retains its

"dairy" gender), meat equipment, fish (so as to avoid using such products with meat, e.g., Worcestershire sauce), and Passover. The "Shopping Guide for the Kosher Consumer" proposes using an English language-based system where *pareve* would be designated "N" for "neutral," while "P" would be reserved for "Passover." At present, the P is used for "Passover" by some of the certifying agencies, and for *pareve* by others. Perhaps ACKO could help pull the participants together in a unified voice to reach the appropriate legislators.

The Kosher Enforcement Bureau of the New York State Department of Agriculture and Markets has a very comprehensive consumer protection-based kosher enforcement mechanism to assure the consumer that products sold as kosher in New York State are really so. About a dozen inspectors specifically enforce the statutory "Orthodox Hebrew" requirements on products being sold in New York State as kosher, but such supervision does not necessarily mean that a rabbi or formal religious supervisor has inspected the product.

This agency recently held two days of public hearings concerning the modernization and simplification of the laws by which they operate. The hearings provided an excellent review of both the strengths and weaknesses of the current system.²⁴ It is important that the kosher community and the food industry throughout the United States be given adequate opportunity to review these laws even if they are specific to New York State. Some of the issues are important even in other states, either as a precedent or because the activities in New York serve to improve the quality of kosher products throughout the United States as companies comply with these regulations.

Three areas in the current law are of particular concern. The first relates to co-mingling. At present, the State of New York requires that supermarkets and other retailers maintain a specifically marked, separate section for kosher products; all products marked kosher are supposed to be in one or more such sections.

In practice, the law is enforced only for meats and a few other products. But even this level of enforcement means that when a non-kosher product is found in the kosher meat section, the state fines the store and this violation is publicized through the state's bi-weekly Agriculture and Market's listing, *Food & Agriculture News*. Although the state has many more food inspectors doing general food and dairy plant inspections, the largest collection of violations are always by the Kosher Enforcement Bureau. To supermarkets, the whole process is a nuisance.

24. B. Clein, "New York State Kosher Laws: The Public Hearings," *Kashrus* (1989), 9(3):26-29; B. Clein, "Proposed Changes in the New York State Kosher Food Law," *Kashrus* (1989), 9(4):46-53; B. Clein, "Who Sets the Standards," *Kashrus* (1989), 9(5):48-49, and B. Clein, "The New York State Kosher Law — A Final Look," *Kashrus* (1989), 10(1):46-50.

Given their labor problems, it is difficult for them properly to maintain these kosher sections separate from the non-kosher sections.

There is a common misconception that requires clarification with respect to these laws. Retail stores are fined after repeated violations where significant numbers of the same unacceptable product are found in the kosher section. The argument that a customer simply changed his or her mind and left the product in that section cannot be accurate with so many repetitions. In fact, the non-kosher product has often been "positioned" in that section by the store.

But, before we judge the supermarkets harshly, let us review the law itself — a law that New Jersey, with its own strong set of kosher laws, has intentionally chosen *not* to have. What is the justification for the New York law? Supposedly, consumers, particularly the elderly, have difficulty reading packages, and might, therefore, inadvertently pick up a non-kosher product. This is particularly true of the few products which may have been improperly labeled and mislead the consumer. A package of non-kosher chopped chicken liver with "Hebrew" style lettering placed next to kosher chopped chicken liver would be harder for the consumer to notice. However, there must be consumer responsibility for purchasing wisely; even halakhah supports this requirement of the buyer.²⁵ The state might enforce (no) co-mingling rules on those supermarkets (and other retailers) that choose to create a kosher food section. But forcing all retailers in New York to abide by these regulations for pre-packaged foods wastes the time and effort of the Kosher Enforcement Bureau. There are many real problems for them to deal with, and maintaining the supermarket's good will might help.

A second area of concern relates to registration of kosher products. New York State's regulations require companies producing kosher products to register them before selling them to ensure that the state's regulations have been met. However, there should be an expansion and strengthening of the requirements to include yearly registration; the package label should read "Registered with the New York Department of Agriculture and Markets — Kosher Enforcement Bureau" (shortened to "NY Kosher Reg."); and, most importantly, a registration number would be assigned to each manufacturing plant that would also appear on the package label. The use of a registration number would help kosher enforcement efforts (in all states) to trace private label brands (see below); it would also give consumers a reference for learning more about the product, i.e., to determine which rabbi approved the product and whether that rabbi's standards are consistent with the consumer's. This is especially important in the case of products with the generic "K." Many companies prefer to use the "K," rather than the trademarked symbol of their kosher supervisor, because it gives them

25. I. Meiselman, "Jewish Business Ethics," *Oraisa* (1989), 1(1):49-63.

more flexibility to change rabbis and/or points of manufacture without changing the package label.

The private label issue is not trivial. When a company markets under such a label, it often uses a number of different manufacturing plants. A stack of labels is printed, and these may then be distributed to different plants. What if one plant is kosher and its label is printed with a kosher symbol, but then the labels are distributed to a non-kosher plant or, perhaps, to a plant under a different rabbinical supervisor? A registration number associated with each plant would help enforcement agencies, both rabbinical and governmental, to monitor the misuse of “free-floating” kosher package labels.

The responsibility for ensuring the integrity of any label, especially of those kosher supervision agencies with trademarked symbols, should be the responsibility of the agency itself. Unfortunately, kosher supervision agencies are not always able to meet their responsibilities. The State of New Jersey is to be commended for giving its kosher enforcement agency the power to prevent mis-branding, including the false use of trademarked kosher supervision symbols.

Another area of concern relates to computerized data bases. At this writing, registration information sits in a large number of looseleaf notebooks in the New York City office of the NY Department of Agriculture and Markets. Calls to that office to elicit the name of a certifying rabbi require a slow manual search; the process interferes with other activities in the office, and is an inconvenient and inefficient way for consumers to get information, particularly if they are calling from outside of New York City.

This data base must be computerized in the near future, and the information made available to all kosher consumers not only in “hard copy” but via computer “electronic bulletin boards.” Consumers could purchase products based on better information; the Kosher Enforcement Bureau would become more efficient in identifying improperly prepared products; and such a system would help many groups (manufacturers, food service organizations, and consumers) to learn what kosher products are available. Data could also include information about the rabbi (or organization) supervising the product as well as a template of specific “tough issues” of consumer interest about the supervising rabbi’s standards on halakhic questions, e.g., the use of animal gelatin.

* * *

Mention has already been made of New Jersey’s strong set of kosher regulations. That state has the advantage of having set up its laws very recently, so that it could avoid many of the pitfalls of the New York laws. One improvement was to place the Kosher Enforcement Office directly in the Consumer Protection Division of the Attorney General’s Office. In addition, the New Jersey law provides for kosher enforcement subpoena authority, injunctive relief, and higher monetary fines. In

cases of dispute between the state and a violator in New York State, the final enforcement power rests with the Department of Law (Attorney General). Unfortunately, the most important cases in New York State ultimately require the cooperation of two offices (Kosher Enforcement and Attorney General), each functioning with its own priorities and standards.

How is change accomplished under New Jersey or New York law? The use of administrative law in New Jersey permits a much more unified code of regulations and a more timely response to needed changes than does the piece-meal legislative route used in New York. Unfortunately, the kosher consumer and some of the legislators with large Orthodox constituencies expect to be able to pass "kosher legislation" each year. That may be good politics, but such continuous legislative changes do not serve the long-term best interest of kosher consumers and the food industry which is trying to provide them with appropriate products. New York State is aware of these deficiencies, and is working within its system to improve the situation. At least fifteen other states have legislation that specifically deals with kosher foods, and all of them establish Orthodox practices as the enforceable standard.²⁶ The New York Department of Agriculture and Markets has hired a Director of Kosher Marketing, specifically to be responsible for assisting the food industry in developing and marketing kosher products.

The Waxing of Fruits and Vegetables: A Case Study

The problem started innocently enough. A new federal regulation had been proposed in the mid 1980s concerning a relatively new material, sucrose fatty acid esters (SFAE). The State of Nebraska was proposing that SFAE would be useful as a coating (wax) for protecting bananas, pears, apples, and pineapples; the fruits would take on a visually appealing "shine." Unfortunately, fruits and vegetables are generally not labeled as to the presence or contents of the wax. What was the problem? SFAE is made from beef tallow. It would become an unkosher, unmarked ingredient on tons of fruits destined for kosher markets. The kosher community was alerted to this problem,²⁷ as was the professional food community.²⁸

26. The full list of states with kosher laws are: Arkansas, California, Connecticut, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Texas, and Virginia. (The constitutionality of the New Jersey law was recently challenged by a company that was found to be in violation. One of the "Friends of the Court" briefs supporting the state represents the Conservative, Reform, Reconstructionist, and Orthodox movements in New Jersey. In August, 1990, the state court upheld the constitutionality of the law.)

27. G.H. Oberly and J.M. Regenstein, "Waxes for Fruits and Vegetables: A Proposal," prepared for the New York State Kosher Advisory Council.

28. J.M. Regenstein and C.E. Regenstein, "Kosher Status of Wax Coatings" (Letter), *Food Tech.* (1987), 41(5):56.

The use of fruit and vegetable coatings is not new. At one time, such coatings and waxes were simply made of paraffin or plant waxes, and were accepted by supervising rabbis as kosher. But the kosher community was no longer paying attention to these items as technology was evolving and industries were making significant changes in their formulations. (This is a general problem that must be addressed by the rabbinical organizations, i.e., reviewing food technologies on a sufficiently timely basis to stay abreast of changes that might affect *kashrut*.) In fact, by 1986, many potentially or actually animal-based ingredients were being used in these coatings and waxes. Kosher consumers were not alone; vegetarians, people with certain allergies, some Moslems and Seventh Day Adventists, and activist consumers concerned with their “right-to-know” were also affected.

Through the actions of various groups, an agreement was reached with United States companies to discontinue using these waxes and coatings from animal products. This agreement, which is still “officially” being followed by the United States industry, is not enforced or even monitored by any organization, and it certainly does not cover waxes or coating products that are used overseas and then imported into the United States.

According to United States law, a product with multiple ingredients requires a label. However, the list of exceptions includes fruits and vegetables; rather than mark each fruit or vegetable, the retailer may hang a sign above the fruit or vegetable display with the full list of ingredients. Alternatively, the produce can be displayed in a shipping carton with this information visible to consumers. Such signs, however, are rarely to be seen. Perhaps you have seen some in recent years, but more probably not. Why not? The fruit packing houses complain that it is difficult to put full ingredient labels on their products because the ingredients used in the wax formulation may be changed a few times a day in accordance with the variable temperature/humidity in the packing house. Also, most of the packing houses use pre-printed cartons. At one time, the industry’s major trade association, the United Fresh Fruit and Vegetable Association, argued that the industry considered the law to be onerous and, therefore, would not obey it. It seems that many supermarkets insist that the fruit packers use these products, but do not themselves make any effort to inform consumers of the presence of these coatings on the produce that they sell.

Through the Governor’s Kosher Food Advisory Council, an attempt was made to develop a compromise position. The request was made that produce be put into three classifications: 1) unwaxed, 2) waxed with materials made with inorganic and plant-based ingredients, and 3) waxed with any legally approved food material, including animal-based ingredients. Companies could simply indicate the correct classification on the produce package or on a sign displayed above the prod-

uce. The listing of potential ingredients in each class could be provided to interested consumers via a publication made available through various industry trade associations and USDA's state Cooperative Extension offices.

Support for the proposal was sought from the various trade associations, which essentially ignored it. The requested changes were submitted to the U.S. Food and Drug Administration as a Citizen's Petition.²⁹ The FDA's own regulations require the agency to respond in 180 days. Just before the end of the 180 days, FDA issued a letter indicating that it felt that it had other priorities, and would not deal with the petition at that time. It has been almost three years since that letter from the FDA. Supplemental material has been submitted to the FDA regularly, as this issue keeps coming up in various forums; many rabbinical groups and others have written letters of support for the petition.

But the environment in the produce industry has changed. The Alar issue in apples, and consumer concern with pesticides on fruits and vegetables, have made the issue of coating and waxing rather "hot." Americans for Safe Food, a project of the Center for Science in the Public Interest, has published "The Wax Cover-Up: What Consumers Aren't Told About Coatings and Pesticides on Fresh Produce."³⁰ The publication includes information about the Citizen's Petition. The trade association for fruit and vegetable growers has undergone a major reorganization, and they are currently re-examining their position on the issue. An Assistant Attorney General in the New York Department of Law is evaluating the legal options for this state agency to enforce federal law. (Note: It is generally preferable for states to obtain the right to enforce federal laws rather than to create new laws that may vary from state to state.)

The FDA has requested that the petition be withdrawn because of technical difficulties, adding the assurance that it intends to do something about this issue. A revised version of the petition is being prepared with the assistance of the FDA. Various organizations, including consumer groups and industry trade groups (which are now willing to participate!) are involved in this process.

A final irony. One of the other trade associations, the Food Marketing Institute, which serves the supermarkets, has recently put out a publication dealing with waxing and pesticides³¹ without ever mentioning the consumers' "right-to-know" about ingredients used on fruits and vegetables sold in the supermarkets. A trade association may have

29. J.M. Regenstein, "Citizen's Petition," Docket No. 87P-0195/CP, Food and Drug Administration (1987), Washington, DC.

30. Americans for Safe Food, Washington, DC (1989).

31. Food Marketing Institute, *A Consumer Guide to Food Quality and Safe Handling: Produce and Pesticides* (Washington, DC: FMI, 1989).

the right to provide only half the story, but the document is “co-sponsored” by the FDA — the same FDA that has not considered the Citizen’s Petition a worthy priority.³²

Conclusion

Kashrut has been referred to as “old laws in a new market.” Clearly, there are ongoing issues that require concerted thought and action by the kosher supervising industry, the state and federal governments, and the food industry. But, most of all, they require the attention of the kosher consumer, for he who leaves careful monitoring to others will inevitably find that s(he) is eating *trayf*.

32. Concerned readers are encouraged to write to the FDA, CFSAN at 200 C St. SW, Washington, DC 20204.

Kashruth — Problems and Solutions

GEDALIA DOV SCHWARTZ

PERHAPS NO AREA OF TORAH OBSERVANCE has received more attention than the laws of *kashruth* observance. Talmudic and rabbinic literature devote a great deal of space to what may or may not be eaten by Jews. The fact that *kashruth* is an area of law that affects and directs daily behavior is why the *kashruth*-observant Jew must, of necessity, be preoccupied with both the standards of *kashruth* and their implementation.

Torah authorities through the generations have responded to a wide variety of questions and problems dealing with *kashruth*. *Sh'eilot U'tshuvot*, responsa of rabbis in many diverse communities, have often shaped attitudes and procedures in the matters of *kashruth*. In recent years, these responsa have reflected the development of advanced technology in the food industry and revolutionary changes in manufacturing processes. Halakhic principles from the very fundamental formulations of the Oral Law have guided rabbinic decisors in their quest for a resolution of any problem in *kashruth*, as well as any other category of Torah observance.

This article will attempt to present some of the more recent responsa topics and their resolution as found in a variety of rabbinic volumes and halakhic journals.

1. Whom Can We Trust?

Observance of *kashruth* is predicated on a basic policy of trust. The consumer of any kosher item must be sure that the product which he is purchasing is kosher beyond the shadow of a doubt. The basic halakhic rule is that the individual supplying or certifying the kosher article must be trustworthy within the standards of halakhah, that he is a *ne'eman*, trusted not to deceive or contravene any kosher law, in addition to general Torah observance and behavior (*Shulhan Arukh, Yoreh Deah*, 119). As a result of these rules, kosher products that are shipped by ordinary means of transport must be labelled and packaged in a manner leaving little likelihood for tampering or substitution of a non-qualified foodstuff. In the controlled situation of total, complete supervision at the source of manufacture and supervised labelling, the products are acceptable without question, since complete supervision has taken place. However, there are situations where total *hashgahah* or supervision is virtually impossible, due to the nature of various ingredients

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that are produced in far flung corners of the globe. The remoteness of these areas and their lack of easy accessibility prevents constant *hashgahah*. May we then rely on scientific chemical analysis of a product in order to ascertain whether it contains a non-kosher substance?

In responding to this question, there is a principle codified in the *Shulhan Arukh* that a craftsman will not damage his "integrity" by making any false statement (*Yoreh Deah*, 98, 1). This statement refers even to a non-Jew who is an expert in a particular field. Although the *Shulhan Arukh* states that in post-Talmudic times we do not fully rely on this principle, nevertheless, later authorities have used it where there was a doubt if any prohibited substance was in the mixture being examined. This halakhic formulation was applied by many authorities in the past sixty years in regard to a variety of different manufactured foodstuffs (viz., *Maharash Engel*, I, 27, *Minhas Yizhok*, I, 11).

The late, well-known rabbinic authority, Rabbi Moshe Feinstein, applies this principle and broadens it to include governmental control of a product, which adds the dimension of *mirtos*, or fear of penalty for noncompliance. He discusses this in a responsum concerning the use of ordinary milk, rather than *Holov Yisroel*, i.e., milk which had supervision at the time of milking. There was an early rabbinic prohibition on the use of unsupervised milk, out of concern for mixture with, or use of, milk from non-kosher animals (*Shulhan Arukh, Yoreh Deah*, 115). Rabbi Feinstein permits use of government-supervised milk from commercial milk companies because they are regulated and subject to penalties for infraction of any rules concerning substitution of any other type of milk (*Igros Moshe, Yoreh Deah*, I, 47-49). Other rabbinic decisions have opposed this leniency, primarily on the basis that the rabbinic prohibition involving *Holov Akum* (milk without Jewish *hashgahah*) stands fast and unbroken even in the face of any scientific chemical analysis (*Helkas Yaacov*, II, 37, 38; see also *Minhas Yizhok*, I, 138, II, 21).

However, it is rather interesting to note that, in regard to reliance on governmental control, the author of the above mentioned work, *Helkas Yaacov*, Rabbi Yaacov Breisch of Zurich, Switzerland, as well as his son, both permit the use of canned sardines and fish such as tuna and salmon, relying only on the principle of *uman lo mara l'umanaso*, the craftsman will not damage his integrity. The very fact that such products are subject to review, and that it can be determined whether there was any exchange of non-kosher substances, makes them acceptable (*Helkas Yaacov*, III, 9, 10).

In a very expansive article on this subject of canned tuna, Rabbi Zvi Schachter discusses the aspects of *uman lo mara l'umanaso*, and emphasizes not only the matter of governmental regulation but that the producers of the tuna are extremely exacting and circumspect as to the use of tuna species which are kosher. Their basic reason for this

quality of circumspection is their reputation for commercial integrity in regard to the product; consequently, it fits into the halakhic concept described previously (*Mesorah Journal*, Nissan 5749, Vol. 1).

The use of the modern tools of technology has increased the possibility of proper *hashgahah*, or supervision, by employing television monitors and controlled timed video cameras. Such techniques, if properly maintained and controlled without any question of tampering, have already been put in place in various facilities, and are considered halakhically acceptable.¹

2. Purification and Purging of Vessels.

In observing the laws of *kashruth*, not only must the food be kosher, but the utensils and vessels used must also conform to halakhic standards. There must not be any contamination of these vessels with non-kosher ingredients if they are to be used in any *kashruth* supervised production. The methods of cleaning such vessels and utensils for kosher use are specifically outlined in the Talmud and the *Shulhan Arukh* (*Orah Hayim*, 451, *Yoreh Deah*, 121). For example, if utensils absorbing non-kosher substances were used with hot water, such as in cooking, the kashering process (where such utensils may be kashered) also requires a purification by immersion in boiling hot water. This is termed *hagalah*.

In food production in a large factory setting, where a special supervised kosher product run must be done on the regular factory equipment, all of the containers and vessels which had contact with non-kosher or questionable items must be *kashered* according to halakhic standards. This has created problems as to how huge steam kettles and other large vats are to be purified for kosher use. Immersing in boiling hot water is not feasible, due to the size of the vessels and, consequently, in some cases they must be filled to capacity, brought to a boil, and then caused to overflow by dropping heated stones into them. This approach follows the traditional pattern of *kashering* such utensils as described in the *Shulhan Arukh*. However, where this process is not possible, the question has been raised whether steam — or, in the industrial field, live steam — could be used as *hagalah* instead of boiling water. This matter was already discussed in the nineteenth century by the famous authority, Rabbi Yosef Shaul Nathanson of Lemberg, who, because of the doubt as to whether steam purification was considered proper *hagalah* (*Sho'el U'meshiv* III, 3, 125), did not allow this method. Nevertheless, Rabbi Shalom Mordecai Schwadron of Breszan, Galicia, was inclined to be lenient in using steam as a purifying *kashering* agent. He writes that it is an indisputable fact that steam is hotter than the

1. See I.M. Levinger, *Modern Kosher Food Production from Animal Sources* (Jerusalem: Institute for Agricultural Research According to the Torah, 1978), p. 462.

water used in cooking, and, according to the great authority, Rabbi Moses Sofer of Pressberg (*Hasam Sofer, Yoreh Deah*, 45), absolute fact is considered more of a substantial proof than a thousand scholarly sources. Therefore, it would seem logical to utilize the steam process of *hagalah*. However, since he believes that this is without precedent, he permits its usage only if the vessel is filled to a third of its capacity with boiling water, and the steam then introduced into the water, so that the combination of the boiling water and the steam will result in an evident *hagalah* (*Da'as Torah, Orah Hayim*, 451, 3).

Rabbi Moshe Feinstein did not permit the use of steam for *hagalah*, except where the steam produced a very high degree of heat with a great deal of moisture, which then was the equivalent of traditional *hagalah* (*Igros Moshe, Yoreh Deah*, I, 60).

In regard to the entire utilization of a steam system for cooking, as is the case in major modern facilities such as hospitals and hotels, such systems — if they operate out of one linkage of pipes to the steam kettles — create problems for any kosher institutional kitchen.

Since a kosher kitchen requires complete separation of meat and dairy, one set of pipes going to and from the different meat and dairy utensils would mean that, halakhically, cooking is being done by the same source of water which has been turned into steam. Thus, this steam would be mixing both meat and dairy through its contact with all types of utensils. In a hotel, for example, where there may be a separate kosher kitchen, the situation might be more complicated if the non-kosher general hotel kitchen used the same connecting steam equipment as the kosher area. Consequently, supervising rabbinic authorities have worked out methods to cope with these problems. The Jerusalem Institute for Science and Halakhah has confronted the above challenges and has published an in-depth halakhic work with the technical knowledge of the mechanics of these systems, and has spelled out the practical ways of coping with the difficulties by designing appropriate boiler and pipe networks.²

It is interesting to note that, in this halakhic/technological work on *kashruth*, a stringent opinion is maintained in regard to using a household dishwasher for both meat and dairy, even with separate racks and at completely different times. Since the normal home dishwasher consists of only one enclosed area, there are possibilities of a mixture of meat and dairy, because we cannot totally monitor scraps or bits of food that may still adhere to the inside of the machine. However, in contrast to this view, Rabbi Moshe Feinstein has ruled that the same home appliance may be used for both meat and dairy, if separate racks are used and the dishes are not washed at the same time. He also advises

2. See Levi Yizhak Halperin. *Kashruth and Shabbath in the Modern Kitchen* (Jerusalem: Institute for Science and Halakha, 1979).

a hot water rinse before changing the machine's use from meat to dairy or vice versa (*Igros Moshe, Yoreh Deah* II, 27-28, III, 10, 2). His ruling is based on the halakhic principle of *nat bar nat* (*noteyn ta'am bar noteyn ta'am*), i.e., where the taste or essence of any permissible food, such as milk by itself, and that of another permissible food, such as meat by itself, mix or come in contact indirectly as in the case of the dishwasher, rather than directly, e.g., by being cooked in the same vessel. This principle, plus the action of the inedible detergent, prevents any prohibited contact or mixture from occurring.³

The invention of the microwave oven, which has revolutionized cooking procedures as to length of time and methods, is also the subject of an ongoing controversy in regard to the possibility of its being *kashered* for Passover. Since the Passover laws in respect to *hamez* or leaven are so stringent that even a speck of *hamez* will not be nullified during Pesah, there is much concern in *kashering* any *hamez*-contaminated oven lest the heat or steam rising from any leavened foods be absorbed in the top of the oven. As a result, the *kashering* process that is used may not have destroyed or expelled this absorbed residue, and it may come out during Pesah when the oven is used. Consequently, all sorts of methods are used to insure that the top of the oven, especially, is completely *kashered*. The microwave appliance, acting on the movement of the molecules in the food, does not cause the sides or interior of the oven walls to become hot. If there is some heat rising, it is a result of the heated food which, in itself, does not generate sufficient heat to cause the food particles to rise and to be absorbed in the top of this appliance. This is the contention of Rabbi Levi Yizhok Halperin, the head of the Jerusalem Institute of Science and Halakhah, and, therefore, he permits the use of such a microwave for Pesah after *kashering* it by placing a glass of water inside at high power.

Rabbi Israel Rosen, of the Zomet Science and Torah Institute, disputes this analysis, and advises placing an entire insert within the microwave oven to insure that there will be no risk of any *hamez* falling into any food cooked during Pesah (*Kovitz Bais Aaron V'Yisroel* No. 4, Iyar 5749).

On the subject of the purification of utensils from non-kosher to kosher, there are halakhic rules as to which types of vessels may be purified. Metal of all sorts may be *kashered* following the guidelines of *kashering*, whether with boiling water or with fire, called *libun*. Glass,

3. Indirect contact is contact through at least two intervening agents, for example, where meat is cooked in a pot (agent one) which then is used to cook a parve (non-meat and non-dairy) food like spaghetti (agent two), which then is mixed with a dairy product like cheese. Similarly, in the case of the dishwasher, the food residue on a meat plate comes in contact with the inside of the dishwasher (agent one), which then comes in contact with a dairy dish (agent two), which then comes in contact with a dairy food like cheese.

in principle, is considered non-absorptive and does not require any *kashering* but, in regard to Pesah, Ashkenazi Jews follow the decision of Rabbi Moshe Isserles in the *Shulhan Arukh* that permits one to *kasher* glass by soaking such dishes or containers for three successive twenty-four hour periods and changing the water after each period. Ordinary dishes and *keylim*, baked pottery, cannot be *kashered*, according to the accepted rule in the *Shulhan Arukh (Orah Hayim, 451, 1)*.

Normally, food may not be cooked in a non-kosher vessel without rendering the contents forbidden; however, if the vessel was thoroughly cleaned and not used for any prohibited food for twenty-four hours, then the contents would be considered kosher *b'de'eved* (discovered after the fact), and would remain kosher (*Yoreh Deah, 103, 5*). However, one could not, *l'hathila* (*ab initio*, or planned deliberately before the fact) use such a vessel after the twenty-four hour period; the vessel must be *kashered*. Therefore, ordinary dishes or pottery which cannot be *kashered*, as described previously, cannot be used even after the minimal twenty-four hour period.

There is a rather innovative ruling by Rabbi Moshe Feinstein regarding the *kashering* of non-kosher vessels. A returnee to Orthodox Judaism, a *ba'al t'shuvah*, had an expensive set of china that was not used at all for more than a year. Is it possible to find a way to *kasher* and permit the use of this china? Rabbi Feinstein permitted the use of these dishes based on the following principles:

1. Since there are authorities who consider the concept of *yishun*, non-usage, for over a year as weakening any absorbed non-kosher substance, so that the vessel could be *kashered*, as is the case of wine jugs which stored non-kosher wine, this could also be applied to other areas of forbidden substances.

2. There is the opinion of the *Hakham Zvi* that porcelain or china-ware, because of its glaze, is non-porous and is similar to glass, so that forbidden foods are not even absorbed.

3. In light of the general Talmudic concept of "*Takonas Hashavim*," we must attempt to be lenient towards those who are displaying repentance and seek to return to full halakhic observance.

4. One may therefore rely on the minority opinion of the *Ba'al Ha'itur*, an eminent medieval authority, that all dishes may be *kashered* by a process of boiling water, *hagalah*, applying this process three times in separate stages of hot water immersion (*Igros Moshe, Yoreh Deah II, 46*; also, *Yoreh Deah I, 43*).

5. There is also the Talmudic concept of *Hefsed Merubah*, substantial monetary loss, which is an effective consideration for being lenient.

Rabbi Ovadia Yosef, former Sephardic Chief Rabbi of Israel, was even more lenient in responding to a situation when he was the Rabbi in Cairo, Egypt. In order to institute *kashruth* in a hospital for the benefit of the Jewish community and to make it available on a communal scale, he permitted the *kashering* of the regular dishes used before, which were non-kosher. In a lengthy responsum based on the above-

mentioned principle of *Hefsed Merubah*, he allowed the *kashering* of the dishes following the method of the *Ba'al Ha'itur* of boiling water three successive times. In this instance he did not require a period of a year for non-usage of the dishes before the *kashering* procedure (*Yabia Omer* I, 6).

3. Problems Relating to Meat

According to Torah law as explained in Talmudic sources and in the Rabbinic codes, appropriate species of animals and fowl may be slaughtered in a particular way called *shehitah*. Kosher slaughter alone does not make the meat immediately available for cooking, but, in order to remove the forbidden blood from the meat, it must be first soaked for a half hour and then salted, remaining in the salt for one hour, and then be thoroughly rinsed.

In the era of the *Gaonim*, the great post-Talmudic authorities in Babylonia, a stringency was adopted, and accepted by all Jews through the centuries, that any freshly slaughtered meat that was allowed to remain for three days without being soaked and salted could be used only by broiling on a direct fire, because of a concern that during this three-day period the prohibited blood would be so dry that the ordinary process of soaking and salting would not remove it (*Yoreh Deah* 69, 12). Rabbi Moshe Isserles, in his commentary, adds that one must not intentionally keep meat unwashed for three days for fear of cooking it. As a result of this edict of the *Gaonim*, special attention had to be given to the washing of the meat within the seventy-two hour period. When abattoirs were located in the municipalities where kosher consumers resided, observance of this law was not so difficult, because it was possible to have personnel to supervise the washing operation within easy access of the packinghouse facilities. However, with the removal of most packinghouses to remote areas, especially in the United States, shipment of meat has to be controlled and coordinated, so that either it arrives at the kosher purveyor in time for an appropriate washing or, if not, when transported by rail or truck, there must be way-stations for washing the product. This is currently the normal procedure in the kosher meat industry.

The question has been debated whether refrigerated or frozen meat can be accepted as being preserved in such a state of freshness so that the law of the *Gaonim* would not be relevant because we may assume that, under these conditions, the blood would not be dried up. Isolated cases of this nature have been discussed in rabbinic works for centuries; however, since the advent of total refrigeration and freezing in the industry involves many logistic problems and possibly great financial loss, contemporary rabbinic authorities have focused on some possible lenient solutions for the problem.

The transport of frozen meat from Argentina and Brazil to Israel is permitted by many of the great rabbinic authorities there, who consider the process of freezing as a suspension of the drying of the blood; consequently, when thawed, the meat may be soaked and salted in the normal manner. Rabbi Uziel, late Sephardic Chief Rabbi of Israel, permitted refrigeration to be considered as a deterrent to the drying of the blood for even more than three days, and ruled that in such cases the meat could be used after regular soaking and salting (*Mishpatei Uziel, Yoreh Deah*, 6).

Concurring with him is Rabbi Ovadia Yosef, in a comprehensive and definitive responsum (*Yabia Omer* II, 4). Rabbi Moshe Feinstein is not so lenient in the above described circumstances, ruling that meat which has not been soaked and salted must not be intentionally frozen — but if it so happened, due to certain circumstances, it would be permissible after regular soaking and salting. In the matter of refrigeration alone, if meat is not washed within the three days it would be prohibited for cooking, and allowed only for broiling (*Igros Moshe, Yoreh Deah* I, 27).

In the United States, the prevailing normative procedure is not to rely on refrigeration or freezing in regard to the rule of the *Gaonim* except in certain extraordinary situations, and only after a thorough consultation with halakhic authorities.

The need for salting meat creates problems for those on strictly controlled diets which forbid any salinity because of serious medical conditions. This has challenged halakhic decisors to find a way that would make it possible to eat meat without its being salted for *kashering*. The alternative of broiling is in many situations not viable, due to the physical condition of the patient. The late Rabbi Yizhok Yaakov Weiss, of the *Eyadah Haredis* of Jerusalem, ruled that two combined methods should be used, not involving salt at all. The first is the Talmudic and Gaonic method called *halit*, of first scalding the meat in a certain way so that the blood remains basically stationary, which then would not be forbidden. The second is to then cook it in very small pieces in a pot that would hold more than sixty times as much meat, thus nullifying any exuding blood, and then pouring out the liquid. He established conditions of control for this procedure by stating that it be used only for a patient hospitalized and told by a physician that he must eat meat without any salt. In addition, the above procedure must be carried out by a learned, observant person who would not, in any way, deviate from it. He cited Rabbi Shmuel Halevi Wasner of Bnei Braq as also advising the following of this method (*Minhas Yizhok* IX, 73, *Shevet Halevi, Yoreh Deah* 26).

The ever increasing changes in food chemistry and manufacturing processes are constantly impacting on the kosher laws. Ecological and conservationist influences also have had their effect in regard to the

restriction of various pesticides which, heretofore, have eliminated many aspects of insect infestation and are resulting now in a rising demand for the vigilance of the kosher consumer to make greater efforts in examining fruits and vegetables for the presence of any bugs. Also, the transformation of animal derivatives into other forms of food ingredients has been, and will continue to be, the subject of many rabbinic responsa, in keeping pace with these phenomena.

The halakhic decisor of today and of the future will, of necessity, require a knowledge of technology in dealing with the many complicated questions that are addressed to him. The vast resources of talmudic and rabbinic law, together with the knowledge of precedent as applied in the responsa collections for many centuries, will constantly serve as a help in resolving and clarifying issues which are vital for the Torah-observant Jew.

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Humanitarian Aspects of Shehitah in the United States

TEMPLE GRANDIN

"PREVENTING PAIN TO AN ANIMAL IS A COMMAND of the Torah."¹ There are numerous passages in the Torah concerning humane animal treatment: "Thou shalt not muzzle the ox when he treadeth the corn." "Six days thou shalt labor and do thy work, but on the seventh day thou shalt rest in order that thine ox and thine ass may rest."² "The teaching of kindness to the living animal is reflected in the Jewish laws governing the slaughter of animals for food: they are designed to secure humane treatment and freedom from pain."³ The Talmud also contains references to the kind treatment of animals: "A calf was being taken to slaughter, when it broke away, hid his head under Rabbi's skirts (referring to Rabbi Judah the Prince) and lowed (in terror). 'Go,' said he, 'for this wast thou created.' Thereupon they said (in heaven), 'Since he has no pity, let us bring suffering upon him.'"⁴ "Great importance is attached to the humane treatment of animals, so much so that it is declared to be as fundamental as human righteousness."⁵

Livestock slaughtered by *shehitah* (ritual slaughter) are killed by severing the four major blood vessels in the throat. The esophagus (food pipe) and trachea (wind pipe) must also be severed. *Shehitah* is performed by a *shohet* (ritual slaughterer) with a very sharp knife,⁶ whose blade must be perfectly free of nicks and imperfections,⁷ since nicks in the blade are likely to cause the animal pain. If the knife becomes nicked or damaged, the animal is declared *treif* or not kosher. The leading rabbinic authorities have declared "the inadmissibility of any method

1. A. Cohen, *Everyman's Talmud* (New York: E.P. Dutton Co., 1949), p. 236.

2. Deuteronomy XXV:4 and Exodus XXIII:12.

3. Bernard Homa, *Shehita* (London: The Board of Deputies of British Jews, Soncino Press, Ltd., 1967), p. 2.

4. The Babylonian Talmud, Seder *Nezikin*, Vol. 1. *Baba Mezia* (London: The Soncino Press Ltd., 1948), p. 486.

5. *Ibid.*, p. 486; see also the footnote on p. 382.

6. Rabbi Yacov Lipschutz, *Kashruth* (Brooklyn, New York: Mesorah Publications Ltd., 1988), pp. 17-21.

7. *Ibid.*, p. 20

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of stunning prior to *shehitah*.”⁸ Thus, the animal must be fully conscious prior to slaughter.

Restraint for Shehitah

Shehitah is exempt from the 1958 Humane Slaughter Act,⁹ which requires rendering an animal unconscious prior to cutting the throat or hoisting. The procedure of shackling and hoisting consists of placing a chain, called a shackle, around one back leg. After shackling, the animal is hoisted into the air until it is fully suspended by that leg. Traditionally, cattle and other livestock were cast into a lying position on the floor (casting) for *shehitah*. Many years ago, the United States Department of Agriculture forbade casting due to sanitary concerns. If *shehitah* is performed while the animal is lying on the floor the throat cut may become contaminated with dirt or manure. When the Humane Slaughter Act was passed, restraining chutes to hold the animals were not readily available in the United States, and that is one reason why the Humane Slaughter Act does not contain legislation on livestock restraint for *shehitah*.

Today, many good restraint devices are available, but some kosher slaughter plants continue to restrain livestock by old fashioned, cruel, dangerous shackling and hoisting. The United States is very backward in this respect as compared to other countries. Shackling and hoisting for *shehitah* is prohibited in Canada, Australia, New Zealand, England and many other European countries. Rabbi Unterman, former Chief Rabbi of Israel, stated that: “In the land of Israel, we do not slaughter a beast hoisted in the air.”¹⁰ Rabbi B. Berkovits, in London, also stated that shackling and hoisting “are not an intrinsic part of *shehitah* and are not, in fact, allowed in England.”¹¹

The Union of Orthodox Jewish Congregations of America (OU) and the Joint Advisory Committee of the Synagogue Council both endorse the use of a restraining pen for cattle.¹² All OU-supervised slaughter plants are required to use a restraining pen for cattle, but some non-OU slaughter plants continue to engage in shackling and hoisting.

8. Michael L. Munk and Eli Munk, *Shechita, Religious and Historical Research on the Jewish Method of Slaughter* (Jerusalem: Feldheim Press), p. 23.

9. P.L. 85-765, 85th Cong., H.R. 8308, August 27, 1958.

10. Letter of Isser Yehuda Unterman, former Chief Rabbi of Israel, to Dr. E.D. Ralbag, Chairman of the Federation of the Societies for Protection of Animals (Tel Aviv, n.d.; approx. 1961). (This and other letters referred to in the footnotes are available in the author's files.)

11. Letter of Rabbi B. Berkovits, Registrar, Court of the Chief Rabbi, Adler House, Tavistock Square, London, to Temple Grandin, August 6, 1986.

12. Morris Laub, *Why the Fuss Over Humane Slaughter Legislation* (New York: Joint Advisory Council of the Synagogue Council of America, 1969); letter of Rabbi Menachem Genack, Rabbinic Coordinator, Union of Orthodox Jewish Congregations of America, New York, N.Y., to Edward Duvine, San Francisco, California, Oct. 20, 1983.

As of 1989, approximately 80 to 90% of kosher cattle were held in a restraining chute and only 10 to 20% were shackled and hoisted. Two very large plants and several smaller ones continue to use the shackle hoist for cattle, but fewer than 10% of the kosher veal and almost none of the kosher lambs and sheep are held in a restraining chute. Modern restraint equipment is used in only one kosher veal plant.

Shackling, Hoisting, Stress, and Injury

During my work as a livestock equipment designer, I have been in hundreds of slaughter plants and for days after visiting a high speed kosher shackle-hoist operation I had nightmares. The frantic bellowing of cattle could be heard throughout the office and the parking lot. Bellowing of this magnitude is never heard from a kosher plant that has a well-designed and operated restraining chute.

In some plants, steers and bulls are tripped by tilting a false floor in a narrow pen. A chain is then wrapped around one back leg and the animal is jerked into the air. When sheep or calves are shackled and hoisted, the chain is wrapped around a hind leg and an employee drags the animal over to the shackle hoist. Animals often struggle violently when they are suspended. In some plants five or six animals may be struggling on the chains while waiting for the *shohet*. In many shackle and hoist cattle plants, a clamp is placed in the nostrils and the neck is stretched by a powerful air cylinder, which may apply as much as 400 lbs. of pull. Suspending a 1300 lb. steer by one back leg is also very stressful. Cattle have more than one stomach of which the heavy first stomach, called the rumen, may weigh up to 130 pounds.¹³ When the animal is suspended upside down, the rumen presses against the diaphragm and lungs, and breathing becomes difficult. Research at the University of Connecticut has indicated that shackling and hoisting is more stressful for sheep and calves than restraint in an upright position in a device that supported the animal under the belly and brisket. The stress is greatest for the heavier calves. Suspended calves and sheep have higher heart and breathing rates compared to animals restrained in an upright position.¹⁴ Hanging by one back leg causes forced breathing in both species.

Shackling and hoisting of large cattle sometimes breaks the animal's leg. About half the legs are bruised prior to *shehitah*, whereas a well-designed restraining chute will not injure or bruise.¹⁵ Jerking and injury

13. A.T. Phillipson, "Ruminant Digestion" in M.J. Swenson, ed., *Duke's Physiology of Domestic Animals*, 8th Edition (Ithaca, N.Y.: Cornell University Press, 1970), pp. 424-483.

14. Rudy G. Westervelt, Don M. Kinsman, Ralph P. Prince, and Walter Giger, Jr., "Physiological Stress Measurement During Slaughter in Calves and Lambs," *Journal of Animal Science*, Vol. 42, 1976:831-832.

15. Walter Giger, Ralph P. Prince, Rudy G. Westervelt, and Don M. Kinsman, "Equipment for Low-Stress, Small Animal Slaughter," *Transactions, American Society of Agricultural*

to the back leg violates the humane intent of *shehitah*. Some American rabbinical authorities have stated that damage to the rear leg does not render an animal *treif*, but many people would agree that it violates the "spirit" of the law. A British rabbi was deeply disturbed when I told him about shackling and hoisting in this country. A. Shoshan, in his book, *Animals in Jewish Literature*, states that "... it is not permissible to tie up the legs of any animal or bird in a way apt to cause pain."¹⁶ The Torah contains numerous passages which maintain that the animal must be unblemished: "Ye shall not offer unto the Lord that which is broken, or crushed or cut."¹⁷ There are also prohibitions about eating limbs torn from animals: "And ye shall be holy men unto me, neither shall ye eat any flesh that is torn of beasts in the field, ye shall cast it to dogs."¹⁸ Shackling and hoisting does not tear off an animal's limb, but it often jerks it hard and causes tearing of the tissues. Some *shoheitim* mistakenly believe that hanging an animal upside down improves "bleedout," the process by which the blood is removed from the slaughtered animal, but University of Connecticut research indicated that bleedout in calves and sheep was slightly better while the animals remained upright in the restraint chute.¹⁹

Available Restraining Equipment

Over forty years ago, the first restraining device was developed in Europe. The Weinberg cattle casting pen consists of a narrow stall which slowly inverts the animal until it is lying on its back. This system is less stressful than shackling and hoisting, but is more stressful to the animal than the newer upright restraint equipment. Recent research by C.S. Dunn indicates that cattle restrained in the Weinberg casting pen had higher cortisol (stress hormone) levels and more vocalizations compared to cattle restrained in the ASPCA pen which is described below.²⁰ The Weinberg method is slow, with a top speed of only 30 or 40 per hour.

In 1963, Cross Brothers Packing Co. patented an apparatus for holding cattle in a standing upright position for *shehitah*.²¹ The patent

Engineers, Vol. 20, 1977:571-578.

16. A. Shoshan, *Animals in Jewish Literature: The Jew and his Animals* (Rehovot, Israel: Shoshanim, 1971).

17. Leviticus, XXII:24.

18. Exodus, XXIII:31.

19. Westervelt, *et al.*, *Op. cit.*, p. 836.

20. C.S. Dunn, "Stress Reactions of Cattle Undergoing Ritual Slaughter Using Two Methods of Restraint," *Veterinary Record*, 1990, Vol. 126: 522-5; J. Rushen, "Aversion of Sheep for Handling Treatments: Paired Choice Studies," *Applied Animal Behavior Science*, 1986, Vol. 16:363-370.

21. See diagrams of the ASPCA pen and a description of correct pen operation in Milton Marshall, Elwood E. Milbury, and Eugene W. Shultz, "Apparatus for Holding Cattle

was purchased by the American Society for the Prevention of Cruelty to Animals in 1964. This enabled any plant to use the device royalty free, and it became known as the "ASPCA pen." It is now in use in 50 to 60% of kosher cattle plants.

The pen is a narrow stall with an opening in the front for the animal's head. A lift supports the animal under the belly to prevent it from collapsing. A chin lift raises the animal's head and holds it still for the *shohet*. After *shehitah*, a shackle chain is placed around one back leg and the animal is hoisted out through the side of the pen. The ASPCA pen can handle 50 to 75 cattle per hour, and, with modifications, up to 100 cattle per hour. Some *shohetim* have stated that the ASPCA pen is more stressful than shackling and hoisting, but these complaints are usually due to a poorly designed "homemade" pen or a pen which has improper modifications added by the plant. For example, I have seen a sharp angle iron, instead of round pipe, used on parts of the pen that press against the animal. The pen, itself, must be adjusted to fit the type of cattle being slaughtered. The belly lift should not lift the animal off the floor, but simply support it.²² Rabbi Menachem Genack of the Union of Orthodox Jewish Congregations of America states, "We have found that the pen not only mitigates pain to the animal, but also has advantages in terms of securing the safety of the shochet and carefully insures proper shechitah in that it immobilizes the head of the animal."²³ To minimize stress and maximize blood loss, the animal should not be fully restrained by the head holder and the belly lift until the *shohet* is ready to perform *shehitah*.²⁴ This general principle applies to all methods of restraint. The interval between complete restraint of the head and *shehitah* should be under 15 seconds.

The next development in kosher restraint equipment for large cattle was the high speed V conveyor restrainer with a head holder, which has a capacity of 200 large cattle per hour and in which cattle ride along between two conveyors which form a V.²⁵ The animal is held in a comfortable upright position, and its body is supported by the angled conveyors along each side, with its feet protruding through an opening between the bottom of the conveyors. The conveyor is stopped for *shehitah*, and a hydraulically operated head holder lifts the animal's

in Position for Humane Slaughtering," U.S. Patent Number 3,092,871, June 11, 1963. Sold commercially by the Cincinnati Butcher's Supply Co. in Cincinnati.

22. Ibid., Col. 3, line 24.

23. Rabbi Menachem Genack, *Op. cit.*

24. Temple Grandin, "How to Reduce Bloodsplash," *Meat Industry* (current magazine title is *Meat and Poultry*), August 1985:49-50.

25. See diagrams and descriptions of the V conveyor restrainer system for cattle in Oscar Schmidt, "Cattle Handling Apparatus," U.S. Patent Number 3,657,767, April 25, 1972, and Temple Grandin, "System for Handling Cattle in Large Slaughter Plants," *American Society of Agricultural Engineers* (collection of meeting papers on file with the Society in St. Joseph, Michigan), Technical Paper Number 83-4506, December 13-16, 1983.

head. Development of the headholder was done by Spencer Foods, Spencer, Iowa, with some assistance from the author.²⁶

In 1986, the first upright restraining system for calves and sheep was installed at Utica Veal in Marcy, New York. A wooden laboratory prototype had been built in the early seventies by the University of Connecticut research team,²⁷ but many additional components needed to be invented to make the system work in a commercial plant. The system at Utica Veal was designed and constructed by Grandin Livestock Handling Systems of Fort Collins, Colorado²⁸ and Clayton H. Landis Equipment Company of Souderton, Pennsylvania. Funding for all phases of this project was provided by the Council for Livestock Protection, a consortium of national humane organizations, and Utica Veal. The restrainer can handle 150 kosher calves per hour. The animals ride astride a moving conveyor and are supported under the belly and brisket. This method of restraint is very comfortable and sheep and calves can be restrained in the apparatus for several hours with no signs of discomfort. They sit quietly and do not vocalize or struggle. The conveyor is stopped for each animal, a yoke holds the back of the neck, and a person holds the animal's head. A fully mechanized head holder could have been constructed, but Utica Veal found that the system worked adequately without it. Since the funding from the Council for Livestock Protection had run out, Utica Veal decided not to construct a fully mechanized head holder. *Shehitah* for Glatt Kosher meat has been performed successfully without the mechanized head holders for over three years. The University of Connecticut has also developed an economical, manually operated restrainer for sheep and calves which can be used in smaller plants that cannot afford the larger conveyor system.

Economic Factors

Decisions to purchase more humane restraining equipment for kosher slaughter are usually made by the plant owners and not by the supervising rabbi or the *shohtim*. A standard non-kosher beef plant can be converted to a kosher shackle-hoist operation at a minimum expense.

26. Photographs and descriptions of a mechanized headholder for *shehitah* in the V conveyor restrainer. Temple Grandin, "Spencer Smooths Kosher Kill with 200 Head per Hour System," *Meat Industry*, August, 1980:54, and Temple Grandin, "Problems with Kosher Slaughter," *International Journal for the Study of Animal Problems*, 1980 Vol. 1 Number 6:375-390.

27. Westervelt *et al.*, *Op. cit.*, pp. 831-837 and Giger *et al.*, *Op. cit.*, pp. 571-578.

28. See description, diagrams and photographs of the double rail restrainer system for upright restraint of calves and sheep in Temple Grandin, "High Speed Double Rail Restrainer for Stunning or Ritual Slaughter," *33rd International Congress of Meat Science and Technology, Proceedings*, Paper Number 3:1, August 2-7, 1987, pp. 101-104 and Temple Grandin, "Double Rail Restrainer Conveyor for Livestock Handling," *Journal of Agricultural Engineering Research*, 1988, Vol. 41:327-338.

The majority of kosher plants are owned by non-Jews, but, unfortunately, there are some extremely bad shackle-hoist plants which are Jewish-owned. It is disturbing that two large shackle-hoist operators spent large amounts of money and time fighting the government about safety and animal rights groups. At one plant, the money already spent on politics would have paid for a restraining pen. Though some kosher plants are not willing to spend money for the sake of humaneness, safety for plant employees is sufficient justification for replacing a shackle-hoist with modern restraint equipment. For that very reason, two large kosher plants recently replaced their shackle-hoists and, at Utica Veal, the installation of the restrainer resulted in a drastic reduction in accidents.²⁹ Records reveal that for an 18 month period prior to the restrainer installation there were 126 working days lost due to five accidents. Three of these were very serious and one man had to have knee surgery. For an 18 month period after the restrainer was installed there was only one bruised hand, requiring two days off. The restrainer has been in place for over three years and there have been no additional accidents.

The shackling and hoisting of large cattle is very dangerous. Employees have been kicked in the head and have to wear football helmets to protect them from the flailing front feet of the cattle. At one plant, a man almost died from loss of blood because the *shohet* cut him while he was attempting to restrain the head of a struggling steer.³⁰ Shackling and hoisting of sheep is also dangerous. Employees have had teeth knocked out, and heavy shackle trolleys often fly off the rail. Modern restraint equipment is costly, but a reduction in Workmen's Compensation claims will often pay for it. Since injured employees are more inclined to sue today, avoidance of a single lawsuit would pay for the most expensive system. Plant managements could be sued on the basis that they use dangerous, obsolete equipment when modern safer equipment is available.

The large conveyor restrainer systems for kosher slaughter that can handle over 100 animals per hour require a major investment of money. The equipment and the building renovations usually cost about \$250,000. An ASPCA pen, however, is much less expensive and can usually be installed in one weekend without disruption of plant operations or structural modifications to the building. Used ASPCA pens can often be purchased for \$5,000 to \$15,000, while a new one costs about \$35,000. For calf and sheep plants which slaughter 100 animals or less per hour, a scaled down ASPCA type pen could be built for about \$3,000 in materials. Small locker plants could build a simple pipe rack for holding sheep and calves for only a few hundred dollars.

29. Letter of Victor Broccoli, Plant Manager of Utica Veal, Marcy, New York, to Temple Grandin, March 10, 1988, and Grandin, "Double Rail Restrainer . . .," p. 335.

30. Temple Grandin, "You Can Handle Cattle Safely," *Meat and Poultry*, May, 1988:4.

Necessity is the mother of invention. If plants would have to get rid of their shackle hoists, many new restraining devices would be invented over night. During the last two years, the Occupational Safety and Health Administration (OSHA) has levied huge fines against several large packers for safety violations and, as a result, the industry has devised many innovative machines which improve safety and are making money for the plants because labor requirements are reduced.

Shehitah Controversy

One of the reasons why rabbinical authorities have been reluctant to advocate a ban on shackling and hoisting is fear that *shehitah* itself will be attacked. In Sweden, Holland, Norway, Switzerland, and Iceland, slaughtering without stunning is forbidden,³¹ and some animal welfare groups in England have also recently advocated a similar law.

Scientific researchers agree that sheep and goats lose consciousness within 2 to 15 seconds after the throat is cut.³² Sheep, in particular, die very quickly after the throat is cut because blood flow to the brain travels through blood vessels that are severed during *shehitah*. In calves and cattle, some studies have shown that unconsciousness is sometimes delayed for over 60 seconds,³³ while other studies have shown that unconsciousness occurs very rapidly within 4 to 17 seconds.³⁴ The anatomy of cattle blood vessels is different from that of sheep.³⁵

31. Rabbi B. Berkovits, "European Schechitah: What Can Be Done," *Kashrus Magazine*, Summer 1989:26-31.

32. Scientific studies indicate that sheep lose consciousness rapidly after both carotid arteries are severed. David K. Blackmore, "Differences in Behavior Between Sheep and Cattle During Slaughter," *Research in Veterinary Science*, 1984, Vol. 37:223-226; Neville Gregory and S.B. Wotton, "Sheep Slaughtering Procedures, Time to Loss of Brain Responsiveness after Exsanguination or Cardiac Arrest," *British Veterinary Journal*, 1984, Vol. 140:354-360. Louis L. Nangeroni and Paul D. Kennett, "An Electroencephalographic Study of the Effect of Shehita Slaughter on Cortical Function of Ruminants." Unpublished Report, Dept. of Physiology, New York State Veterinary College, Cornell University, Ithaca, New York, September, 1963; and W. Van Schulze, H. Schultze, A.S. Hazen, and R. Gross (no title available), *Deutsche Tierärztliche Wochenschrift*, 1978, Vol. 85:41-76.

33. Scientific studies indicate that the onset of unconsciousness in cattle and calves is sometimes delayed for more than 60 second after both carotid arteries are severed. David K. Blackmore, "Differences in Behavior Between Sheep and Cattle During Slaughter," *Research in Veterinary Science*, 1984, Vol. 37:223-226; and Clyde C. Daly and E. Kallweit, "Cortical Function in Cattle During Slaughter: Comparison of Conventional Captive Bolt Stunning Followed by Exsanguination With Shechita Slaughter," unpublished manuscript, Institute of Food Research, Bristol Laboratory, Langford, Bristol, England, 1986.

34. Scientific studies indicate that unconsciousness occurs rapidly in cattle and calves. Nangeroni and Kennett, *Op. cit.*, and I.M. Levinger, "Jewish Method of Slaughtering Animals for Food and its Influence on Blood Supply to the Brain and on Normal Functioning of the Nervous System," *Animal Regulation Studies*, 1979, Vol. 2:111-126. Neville G. Gregory and S.B. Wotton, "Time to Loss of Brain Responsiveness Following Exsanguination in Calves," *Research in Veterinary Science*, 1984, Vol. 37:141-143.

35. B.A. Baldwin and F.R. Bell, *Journal of Physiology*, 1963, Vol. 167:448-462, and B.A.

Observations made by the author indicate that the cutting technique of the *shohet* may explain the great variation in the results of scientific studies concerning the onset of unconsciousness in calves and cattle. At Utica Veal it was possible to observe accurately the reactions of hundreds of 375 lb. veal calves to *shehitah*. The most skillful *shohet* was able to cause over 95 percent of the calves to collapse immediately.³⁶ When a less skilled *shohet* performed *shehitah*, up to 30 percent of the calves righted themselves on the table and some animals even walked on the moving table like on a treadmill.³⁷ Both carotid arteries were severed in all animals. All *shohtim* cut the throat in the same location and depth, but the most skillful *shohet* used a rapid stroke and there were no sawing motions while the knife was passing through the carotid arteries.³⁸ The less skilled *shohet* used a slower knife stroke and observations indicate that the arteries were more likely to seal off that way.³⁹ To insure the humaneness of *shehitah*, *shohtim* could be tested periodically to make sure that their technique induces immediate collapse.

Good cutting technique will also prevent poor bleed-out and bloodspots in the meat. The latter are a common problem in cattle killed by *shehitah*⁴⁰ and are more likely to occur if the arteries seal off. They are also caused by tearing small capillaries in the muscles while the animal is being restrained. Shackling and hoisting or a poorly designed restraint system may increase bloodspots, but a well designed restrainer will help reduce them.⁴¹ Many *shohtim* and plant managers do not realize that fluctuating temperatures and rapid weather changes also greatly sensitize animals to bloodspots.⁴²

The Need to Eliminate Shackling-Hoisting

The elimination of shackling and hoisting as a method of restraint would help strengthen the position of *shehitah* in the United States. Many

Baldwin, "Anatomical and Physiological Factors Involved in Slaughter by Carotid Section," *Humane Killing and Slaughterhouse Techniques* (London: Universities Federation for Animal Welfare, 1971), pp. 34-43.

36. Temple Grandin, "Double Rail Restrainer for Stunning or Ritual Slaughter," International Congress of Meat Science and Technology, 1988, p. 102.

37. Temple Grandin, published discussion with 34th International Congress of Meat Science and Technology, Workshop on Stunning of Livestock, August 29 to Sept. 2, 1989, Brisbane, Australia, p. 27.

38. Ibid., p. 27 and Temple Grandin, "Double Rail Restrainer for Stunning or Ritual Slaughter," International Congress of Meat Science and Technology, 1988, p. 102.

39. Neville Gregory provides a possible physiological explanation for the difference between the efficacy of the more skilled *shohet's* cutting technique. Published discussion, 34th International Congress of Meat Science and Technology, Workshop on Stunning of Livestock, August 29 to Sept. 2, 1989, Brisbane, Australia, p. 43.

40. Temple Grandin, "How to Reduce Bloodsplash," *Meat Industry*, 1985, p. 50.

41. Ibid., p. 50.

42. Ibid., p. 49.

meat industry people think that shackling and hoisting is part of the slaughter ritual and, unfortunately, there are some *shohtim* who have defended it. Either they do not realize that much better restraint systems are available or they have had a bad previous experience with a “home-made,” poorly designed restraining pen or a system that had been modified by either unknowledgeable or uncaring plant employees. People working in slaughter houses often become numbed and callous.⁴³ They sometimes deliberately abuse animals, though I have never observed a *shohtet* who engaged in deliberate animal abuse.⁴⁴ However, some *shohtim* may also have become “numbed” and a few of them in the United States have declared that shackling and hoisting was not stressful, although, in England, where shackling and hoisting is not permitted, shackle hoist pictures horrified the viewers.

Consumers of kosher beef, veal, and lamb need to put pressure on the meat industry to replace the remaining shackle hoists. One way to do so is to buy only from plants that use proper restraining equipment. Every slaughter plant that ships across state lines has a USDA (United States Department of Agriculture) “Establishment Number” which is stamped on the carcasses, or is printed on the wholesale boxes. Unfortunately, the middlemen who sell kosher meat to the local butcher sometimes remove these numbers. One should insist on seeing the USDA inspected purple stamp on the carcasses or the printed label from the wholesale meat boxes. Plant names and addresses can be obtained through the USDA in Washington, D.C.

The Jewish community should also consider assisting in funding the installation of humane restraint equipment. In return, a plant would guarantee to continue its kosher operations and would be provided with a reliable market for its meat. Kosher beef plants need the financial support of the Jewish community. Some of these are dilapidated, old installations that got into the kosher business to keep a marginal business going. It is, however, becoming increasingly difficult to compete against huge, super-efficient, non-kosher plants which slaughter over 4000 cattle each day. Kosher plants have to compete against these mega-plants to sell the hind quarters and *treif* beef, though the competition problem does not exist in the veal industry where there are several highly profitable plants that have made no effort to replace their shackle hoists.

Conclusions

Elimination of the cruel and dangerous practice of shackling and hoisting as a method of restraint would be in accordance with this statement by Samuel Dresner:

43. Temple Grandin, “Behavior of Slaughter Plant and Auction Employees towards Animals,” *Anthrozoos*, 1988, Vol. 4:205-213.

44. *Ibid.*, p. 212.

Kashrut is a systematic means of educating and refining the conscience of those who observe it from early age to death . . . [T]he observance of Kashrut by the people of Israel has helped to do precisely this for them over the centuries, for to teach reverence for animal life is, all the more, to teach reverence for human life. The Jews are called *rahmanim b'nei rahmanim*, merciful ones and the children of merciful ones.⁴⁵

To this end, therefore, the cruelty of shackling and hoisting should be abolished, and it can be easily and economically replaced.

45. Samuel H. Dresner, *The Jewish Dietary Laws, Their Meaning for Our Time* (New York: The Burning Bush Press, 1959, 1966), p. 38.

The Kashruth Laws: On the Interface of Halakhah and Science

MOSHE DOVID TENDLER

Preface

THE LETTERS OF THE HEBREW WORD FOR darkness, *hoshekh* — noted an anonymous (and cynical) wit — also constitute an acronym for three pillars of Jewish life: *hinukh* (Torah education), *Shabbos* (Sabbath observance) and *kashrus* (*Kashruth* laws). History has demonstrated that Orthodox Judaism has preserved the Divine enlightenment that is reflected in these traditional aspects of Judaism. Unfortunately, their absence, since the secular Enlightenment, in so many Jewish homes has been accepted and even encouraged by non-halakhic movements in Judaism, beginning with Reform in the 19th century. These movements chose to put their faith in reason, science and technology, declaring that these fundamental religious obligations of *hinukh*, *Shabbos* and *kashrus* were no longer binding on the descendants of those who heard our teacher, Moses, instruct our nation in what is a Jew.

The *kashruth* laws are among those Divine commandments classified as *hukim* — categorical imperatives for which no reason is specified in the Torah. It is axiomatic, in our faith, that our omniscient G-d does not act or speak arbitrarily. Our sages affirm this concept by noting: All that G-d created in His world has a purpose; even every insect has a specific role to play.

Thus, our Torah scholars disregarded the *hukim* classification and searched for human understanding of all Divine ordinances. Indeed, it is our right, if not actual duty, to search for such rational explanations. But this search is not without danger. Egotistic man, always suspect of self-worship, may confuse human reason with the Divine commandment and, in the course of time, forget that no Divine imprimatur was given to his rational explanation of G-d's commandments. Rational explanations are timebound; Torah laws are timeless, eternal, immutable. The ever-changing scientific knowledge of the day may serve as a source of rational explanations but not as a source of authority for observance of Torah law. The authority is G-d, as believed by all of Western civilization, Jew and non-Jew, until "progressive Judaism" denied the Divinity of the Torah. To this day, the Christian world does not question the Divine authorship of *kashruth* laws. Rather, it makes the false claim that the Author of these

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laws withdrew them in favor of a religion based solely on theological beliefs rather than on beliefs that require specific actions — the *mizvot*.

Science in the Service of Torah

The Lord of nature, *Elokim*, and the Ruler of man, *Hashem*, is One! Therefore, there cannot be conflict or controversy between religious truth and scientific facts. The Torah life style, demanding meticulous observance of all *mizvot*, is also a good, healthful way to live: “Behold I give you today blessing and curse. The blessing will be yours if you heed the *mizvot* of the Lord your G-d which I command you today” (Deuteronomy 11:26). Many of these blessings are ours because of our observance of *kashruth* laws. Some examples follow:

a) Kosher slaughter is the most humane, pain-free method of killing animals for food or clothing. The instantaneous loss of cerebral circulation, when the major blood vessels are severed by an incredibly sharp knife in the hands of a professionally trained *shohet*, makes this act of human mastery over other species a humane act as well. A great teacher of the last generation was wont to say that the *shohet* in his town whets his sharpening stone with tears, because he had studied the laws of *shehitah* assiduously; killing animals did not make him a killer.

b) The careful examination of the lungs and internal organs removes diseased animals from our diet.

c) The pig is a source of trichinosis; shellfish are a source of hepatitis and other viral diseases; wild game such as rabbits, opossum, kangaroo, etc., are riddled with infectious agents and parasites.

But the above rational explanations are *not* the reason for our observances. It is the realization that there are Divine Imperatives that is the sole reason for the observance of these laws. Cooking pig for hours in a sterilizer does not make it any more kosher or less of a pig!¹

1. The “Barbirosa pig” won’t go away. Erroneously claimed to have “two stomachs” and, thereby, allegedly kosher because it is assumed to chew its cud (as well as having a cloven hoof, as required for kosher animals), it reappeared this year during the debate in Israel on the proposed law to ban the sale or manufacture of pork products. I have seen this pig in the San Diego Zoo. It is not a ruminant; it does not chew its cud. The pig, as described in the Torah (*Leviticus* 11:1-8), is unique among mammals in that it has a cloven hoof but does not chew its cud. Indeed, the Talmud (*Hulin* 59a) cites this uniqueness of the pig as proof of G-d’s mastery of his world (*Melekh shalit be’olamo*). Who else but the One who created the world would commit eternally to a statement, made thousands of years ago, that only one animal can be found throughout the world that has a cloven hoof and does not chew its cud — the pig? Was G-d not fearful that the Torah would be proven wrong at some later time? Of course not! “The King is master of His world!” The Barbirosa pig has but one stomach, with a slight constriction or band in the middle. It is not a ruminant, but a pig like all other pigs.

Science as Foe

Progressive Judaism turned science against religion by claiming unto itself omniscience rivalling the Divine Intelligence. By insisting that the pig was prohibited *because* of trichinosis, and shellfish *because* of viral disease, they could then conclude that preparing these foods in accord with proper hygienic practices makes them “kosher.” Kosher laws could thus be disregarded in an age of scientific understanding of health and disease.

But the rational, scientific facts of Jewish survival cannot be reinterpreted. Without the instructional impact of the Torah life style on Jewish children, universal morals and ethics have proved to be an inadequate substitute. Inter-marriage, assimilation, and Jews without Jewish identity has been their fate. “Scientific” became a synonym for godlessness, and the Jewish population of America dropped from 4% in the 1950’s to 2% in 1989!²

Science as Ally

Supermarkets are filled with products that have received kosher certification. No one need feel deprived because of *kashruth* observance. The contributions of chemists who produced synthetic glycerine; vegetable sources for almost all fats needed in food manufacture; soy proteins to substitute for animal proteins; and microbial fermentation to produce amino acids previously available only from meat digests, made this possible. These non-animal sources have provided the food industry with flavorings to satisfy every taste. We now have butter flavor that is not dairy, meat flavor that is of plant origin, chicken soup that never saw a fowl, and cheese cakes that can be served as dessert after a meat meal. The old saw, “*S’iz shver zu zayn a Yid*” (it is difficult to live like a Jew), is no longer valid. It is the easiest way to live in harmony with G-d and man. The only real difficulty comes from the calories and cholesterol in the traditional diet of the European Jew!

Supervision From Afar

International food companies have set up production facilities in many distant parts of the world. For example, banana chips are packed in Manila; tuna is packed in Pago Pago (Fiji Islands); other fishes in Norway, Africa (Lake Victoria), Portugal, Indonesia, etc. How can these

2. While the lowered Jewish birthrate is surely a factor in this decline, this is — at least in part — a reflection of the assimilationist value system, in keeping with the non-Jewish world in America, in which the family has assumed a lesser significance in personal goal achievement. See also, *The Wall Street Journal*, July 20, 1990, p. 12, which attributes the decline from 4% to 2% to intermarriage and the lowered Jewish birthrate, without observing the relationship between them.

production facilities be supervised to affirm the *kashruth* of the final product?

Obviously, the best method would be to assign a reputable, learned *mashgiaħ* to be present to guarantee the *kashruth* of the product, but this is both expensive and usually difficult to accomplish because of a shortage of personnel who are able and willing to spend weeks or months in a foreign land, away from family. These production facilities, therefore, are “not kosher.”

Even when a *mashgiaħ* is present, it is almost impossible to supervise several “lines” where fish are being moved along belts at great speed. Modern technology, though, can resolve this problem. The key halakhic concern is that only fish with “kosher” scales (*kaskesses*) be processed. The reflective surface of a scale can serve to activate a sensor so that no scaleless fish can enter the production line.

An alternate or additional step can be undertaken to subject the final product to statistically valid sampling. Gas chromatography can accurately differentiate between the various species of fish on the basis of their lipid (fat) composition. Similarly, sensors which, upon command, will report the nature of the material being processed can be placed in various tanks, cookers and mixers. In this way, a request for a “read-out” can be transmitted across continents to ascertain the *kashruth* of the product.

Many Orthodox Jews do not accept the lenient ruling that exempts industrial food preparation from the halakhic requirement that one of the Jewish faith must participate in the cooking or baking process (the law of *bishul akum*). However, if a Jew lights the oven, the rest of the food preparation can be done by members of other faith communities. A solenoid valve responds to electrical impulses and even complex directions can be submitted via computer technology to initiate the manufacturing protocol. Thus, a Jew sitting in New York can light up the retorts in Pago Pago or Thailand with a press of an “enter” button on his computer keyboard.

TV cameras which map the surface of Mars or Venus, and transmit accurate photographs across millions of miles in space, can be equally accurate when focused on a production facility. The supervising rabbi can actually “peek in” at will, to assure himself that all *kashruth* regulations are being followed. The “all seeing eye” of the TV camera, with a permanent film record, may well be more accurate than the human eye of a tired, bored, *mashgiaħ*, especially when production lines can run for three work shifts, requiring 24-hour supervision.

Scientific and Technological Progress: Halakhic Importance

Food technology has benefitted from the great advances in chemical and biological research. Enzymatic conversions are routine in food prep-

aration. These enzymes, used in converting starch to corn syrup, and fats to fatty acids for food flavorings, are often of animal origin. When does such an extract lose its halakhic status? How many chemical steps must one take to go from *treyf* to kosher? What about “fixed” enzymes, i.e., enzymes that are fixed to a rod of plastic, thereby allowing them to interact with a food material without ever actually mingling with it so as to cause a halakhically problematic mixture (*ta’arovet*)?

What about the gene for the production of rennet, which is removed from a lamb’s stomach and inserted into a bacterial cell, which then produces pure “animal” rennet essential for manufacture of hard cheeses? Similarly, DNA recombinant research poses exciting and perplexing problems for the future of *kashruth*.

Swordfish is a non-kosher fish, as are shark and sturgeon because they lack “kosher” scales. The ruling of Conservative Judaism approving the *kashruth* of swordfish, because at some early juvenile stage it has “glass spicules” on its surface, was in response to a *de facto* situation. But what if, with a single gene transfer, a swordfish can be produced with true scales (ctenoid or cycloid)?

With our mastery of cell fusion we can blur species boundary lines. We can, indeed, fuse cells, as we do routinely between mouse and man, or transfer many genes from non-kosher to kosher gametes. When is a cow no longer a cow? How many genes are needed to destroy species identity?

These are real *she’elot* (queries) requiring mastery of the scientific facts as well as a deep understanding of halakhic principles. Fortunately, we now boast of such competent personnel, scientists of the first rank who have a true mastery of talmudic law; they are no longer an oddity. They are the products of Yeshiva University and its graduate schools; they are the graduates of rabbinic training schools in Brooklyn and Baltimore who completed their scientific training during the late afternoon and evening hours. They represent the majestic future of Torah Judaism as it interacts with the best of our scientific world.

Kosher Wine

ODELIA E. ALROY

THE ASTONISHING SELECTION OF QUALITY kosher wines, available today on the American market, is prompting the wine consumer to ask what exactly “kosher” wine is, and why we, as Jews, make use of it.

Wine has a central role in Jewish tradition. The *Kiddush*, a special benediction said for the fruit of the vine, is different from the benediction said for other fruits and vegetables. It is recited on the Sabbath and on special joyous occasions such as circumcision, betrothal, and marriage ceremonies, as well as on Jewish holidays when the drinking of wine is considered a special *mizvah* (religious commandment).

Jewish law, as it applies to wine-making, covers the process from the crushing of the grapes to the sealing of the wine bottle, and, later, to the pouring of the wine. The harvesting of grapes and the handling of wine contained in sealed bottles are exempt from restrictions. In order for a wine to be considered “kosher,” it must satisfy two criteria: it must not be touched by a Gentile, and it must contain only kosher ingredients. Wines which are touched by Gentiles fall into two categories: *yayin nesekh* (wine that is used for idolatrous libations), and *stam yeinam* (wine for which the use is unknown). In terms of use by kosher consumers, *yayin nesekh* is not permitted for pleasure (e.g., drinking) or for benefit (e.g., trade); *stam yeinam* is permitted for benefit but not for pleasure, while kosher wine has neither restriction.

Yayin Nesekh

Since ancient times, wine has been used in the rituals of most religions. During the Biblical period, the pagans used all types of wine for the practice of idolatry. These wines, collectively known as *yayin nesekh* (literally, libation wine), were forbidden to Jews because of their association with idol worship (forbidden to Jews). The rabbis considered the prohibition of *yayin nesekh* to be a Biblical commandment, pointing to the passage in Deuteronomy 32:37: “Where are their gods, their rock in whom they trusted; which did eat the fat of their sacrifices, and drank the wine of their libations?” The passage from Daniel 1:5, in which “the king’s” wine is mentioned in conjunction with Jewish children, is also cited in support of this prohibition: “And the king appointed them a daily provision of the king’s meat, and of the wine which he drank: so nourishing them three years, that at the end thereof they might stand before the king.” This expression, in the rabbis’ view, makes a distinction between the Bab-

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ylonian king's wine (idolator's wine), and Jewish wine. The details of the prohibition of *yayin nesekh* were codified for the first time in the Talmud (*Avodah Zarah*), and varying responsa were subsequently written (e.g., during the 16th century in the *Shulhan Arukh: Yoreh Deah*),¹ as new circumstances arose for which the Talmud did not provide complete instruction.

The prohibition of *yayin nesekh* applies to drinking and deriving benefit (e.g., trading) from any product made from the juice of grapes, fresh or dried, as is the case for brandy, grape juice, grape candy, wine-vinegar, champagne, some spirits, and certain fruit liquors containing grape-wine alcohol. It does not apply to wine made with something other than grapes, or to alcoholic beverages, such as beer and whiskey, which are made of grain.

Stam Yeinam

Stam yeinam ("their [the gentile's] ordinary wines"), are wines where it is not known whether their use is for the purpose of idolatry or for other purposes. The original prohibition of *yayin nesekh* was fully extended to *stam yeinam* because the rabbis felt that it would be difficult for most Jews to distinguish easily between the two kinds of wine.

During the time of the Bible, and, later, during the time of the Talmud, it was reasonable to suspect all Gentiles of idol worship. Today, it is difficult to characterize a non-Jew as an idolator, as both Christians and Muslims are generally considered monotheists. During the Middle Ages, the *Gaonim*, and the majority of the later authorities, lessened the original prohibition on Gentile wine by writing that non-Jews are no longer considered to be experts on libations and their use. It is, therefore, generally accepted today that the wine of Gentiles is not *yayin nesekh*, but simply *stam yeinam* (even though there are those who would argue that some forms of idol worship still exist today). The *Shulhan Arukh (Yoreh Deah)* asserts that wine of any non-Jew who does not practice idolatry (*stam yeinam*) is prohibited only for drinking, but not for beneficial use. The law for *stam yeinam* is, therefore, more lenient than that for *yayin nesekh*, which does not allow any benefit from such wine. Since idol worship today is extremely rare, a Gentile's touch would only be considered, at worst, to render the wine undrinkable.

Later, a second reason for the prohibition of *stam yeinam* developed as an extension of the first: *hatanut* — the idea that a close relationship with a Gentile, coupled with the drinking of wine together, could lead a Jew to intermarriage and/or to go astray from the ways of Torah. According to the Talmud, the Torah reinforces such a notion with the accounts it reports in Numbers 25, where the daughters of Moab succeed in the conversion of the Israelites to praying to their prophet Bilaam. In the Talmud it is said that this event occurred because of the use of Gentile wine,

1. All references to *Yoreh Deah* are taken from pp. 123, 124, 132, 134.

since at the time there were no restrictions on wine. There is, however, no reference to wine in the Torah account.

The handling of a Jewish wine by a non-Jew renders the wine unsuitable for drinking. Handling of wine is defined as touch accompanied by movement (of the liquid). Therefore, if a non-Jew touches an open container of wine without causing any movement, there is no restriction on the wine.

A problem arises in contemporary society by the existence of a large number of non-observant Jews. Does one consider their touch in the same manner as the touch of a non-Jew? Some rabbinic authorities believe that the answer is yes, that the touch of a non-Sabbath-observing Jew renders a wine *stam yeinam*, as does the touch of a Gentile. They argue that according to the *Shulḥan Arukh*, a person who was born a Jew but does not follow Jewish law (*halakhah*), particularly in regard to idol worship and public desecration of the Sabbath, has the status of a *mumar* (literally, a convert) and is not allowed to perform *sheḥitah* (ritual slaughter). (There is some debate over whether or not this is a Biblical or rabbinical decision.) Other authorities argue that there is little, if any, idol worship in today's society, and as for the danger of intermarriage, they argue that there is no Jewish law forbidding the marriage of one's child to a *mumar* (although there may be better choices for a marriage).

Mumar, a term used in regard to *sheḥitah*, refers to one whose intention is publicly to degrade Torah practices and humiliate those who follow Torah — i.e., an active participation. This is certainly not the case with most non-observant Jews today. These Jews are passive, and are simply considered to be lacking in Torah knowledge. While their actions and beliefs, reinforced by the society in which they live, are not consistent with the ways of Torah, they are not considered to be *mumarim*. Such Jews can be seen as *tinokot shenishbu*, individuals who were “captured” and taken from their homes as babies, and who were never given the opportunity to learn Torah or perhaps were never even aware of the existence of Torah. Certainly today, one can make this analogy regarding a great portion of American Jewry. One who is a *tinok shenishba* does not act with wrongful intent, but simply does not know any better.

Both views on the status of wine touched by a non-religious Jew (i.e., *yayin neseekh* vs. *stam yeinam*) have supporters, ranging from those who insist on upholding, without exception, the basic principles regarding non-Sabbath observers, to those who are adamant about supporting such Jews in the hopes that they will realize the merits of Torah-living. Generally, Orthodox Jews consider the touch of a non-Sabbath observer as rendering the wine *stam yeinam*, whereas the majority of Conservative, Reform and Reconstructionist Jews do not have the same view vis-à-vis the touch of non-Sabbath-observing Jews. They consider both the observant and non-observant Jew as a Jew, without distinction between their touch. In-

deed, many, if not most, Jews in the latter two groups are willing to drink wine made by non-Jews.

The *Shulhan Arukh* (*Yoreh Deah*) says that “if a non-Jew who is not idolatrous in practice touches wine without intent . . . this wine is permitted for the purpose of drinking.” *Yoreh Deah* also says: “and today when the nations are not idolatrous, every act of touching on their part is treated as accidental.” While this view is accepted, such a statement should be used in conjunction with other factors when determining the acceptability of a wine for drinking. If a non-Jew’s role in the wine-making process is limited to the pressing of a button, as in the case of an electric wine press, is he considered to be handling the wine? Answers vary, although it is generally accepted that this is considered as handling. All processes concerning the kosher wine must be operated solely by Sabbath-observing Jews, and, therefore, it is irrelevant if the winery is owned by a Gentile. During the wine-making process, samples are removed in order to taste and examine the wine. Since this is usually done with a utensil, there is never any physical contact with the wine. If such an operation is carried out by someone other than a Sabbath-observing Jew, is it permissible to drink the wine? In general, “kosher wine” is wine which is handled from the beginning of the wine-making process (the crushing of the grapes) until its end (when the wine is bottled, corked and sealed) solely by Sabbath-observing Jews. If wine is in a sealed container, it is acceptable even if a Gentile has caused the wine inside to move about.

Yayin Mevushal

Yayin mevushal is a special category of wine. The Gemarah (*Avodah Zarah*) says that cooked wine, “*yayin mevushal* is not suspected of idolatrous use.” The Rambam explains this as follows: “[The sages] prohibited only such wine that was considered suitable by idolators for [idolatrous] libations. Therefore, cooked wine belonging to a Jew, that was touched by an *akum* (literally, star worshipper) is not prohibited, and may even be drunk in the company of an *akum* from the same cup . . .” Thus, a boiled kosher wine may be touched by a Gentile and still remain kosher. However, *once a wine is stam yeinam*, it cannot become kosher through cooking, since it had not necessarily fulfilled the requirements needed to be considered kosher.

There are two basic definitions of cooked wine. The first definition is that a cooked wine is grape juice that is brought to a boil (*retihah*). The second definition states that wine is considered cooked when the volume of the juice decreases due to the cooking process. Further definitions combine the two aforementioned definitions: the juice boils and consequently its volume decreases. According to the Talmud,² boiling, *retihah* of food, in general, is achieved when *yad soledet bo*, the liquid reaches a lev-

2. B. *Shabbat* 40b.

el of heat which causes the hand to recoil at its touch. Rashi makes the point that such a definition is imprecise, since different individuals have different tolerance levels to heat. Rabbi Moshe Feinstein accepts the volume definition as the primary factor. In his first responsum on the subject, he maintains that at 175°F both *yad soledet* and volume reduction are fulfilled. In his second responsum, he determines that, by heating to 165°F, the volume requirement is met, although not the *yad soledet* requirement (which he does not consider as primary). The Tzelemer Rebbe disagrees with Rabbi Feinstein's opinion, maintaining that to decrease the wine's volume, it must reach 190°F (a temperature high enough to also meet the criterion of *yad soledet bo*).³

Pasteurization (the passing of a liquid over steel plates heated to a very high temperature) of wines is normally the accepted method for making *yayin mevushal*, with differing opinions as to the temperature requirement; the Union of Orthodox Jewish Congregations of America has a required minimum of 168°F, while the Lubavitch rabbi requires 190°F.

Like other *mizvot* which are not fully detailed in the Torah, *yayin neseekh*, and especially *stam yeinam*, have many exceptions, additions, and considerations ranging from more lenient to more strict. In general, the Orthodox movement believes that Gentile wine today is considered *stam yeinam*, and not *yayin neseekh*, because there are no longer idol worshippers where wine is made or served. They believe that while one can derive benefit from *stam yeinam*, one should not drink from it, in order to avoid intermarriage which could result from social interaction with non-Jews, enhanced by the drinking of wine together. Among the Orthodox, there are many who insist on using a *mevushal* wine if it is to be served in the company of non-Jews, or non-observant Jews. There are also those who use exclusively *mevushal* wines. Certainly for catered functions as well as for restaurants that are certified kosher by an Orthodox rabbi, only *mevushal* wines are served, since the staff pouring the wine is often not Jewish, and their touch may render the wine non-kosher.

Manufacturing of Kosher Wines

In order to prepare a facility for making kosher wine, the presses, vats, hoses, aging barrels, and bottling equipment are cleaned or sometimes replaced with equipment set aside specifically for the kosher production. Only Sabbath-observing Jews handle the entire cleaning process, as well as the actual wine-making. It is not necessary for a rabbi to be present, as long as there is one expert on Jewish law present (*mashgia'h*). The regular winemaker gives instructions to the workers without touching the wine or any of the equipment.

According to the *Shulhan Arukh*, vessels which once contained non-

3. Rabbi Israel Polceyeff; "Stam Yeinom," *The Journal of Halacha & Contemporary Society*, No. XIV, Fall 1987.

kosher wine but are now to be used for kosher wine, should be filled with water to the very brim and allowed to stand for twenty-four hours; after that they should be emptied of that water and refilled with fresh water, and again allowed to stand for twenty-four hours; this procedure should be performed a third time. Washing the vessels as well as filling them with water and emptying them again is done only when cold wine was kept therein. If the vessels were used to hold hot wine, they require cleaning with boiling water, as would be the case if they contained other forbidden matter.⁴

One could argue that *mevushal* wine, once pasteurized, can be handled by anyone since it is no longer wine suitable for idolatry. Nonetheless, most rabbis require surveillance of the *mevushal* wine until it is bottled, corked and sealed, in order to ensure that it does not come in contact with non-kosher wine or with non-kosher foods. In addition, they require that the labelling of the wine also be supervised, in order to avoid the mistake of labelling a non-*mevushal* wine as *mevushal*.

Kosher Ingredients

Beyond the prohibitions regarding *stam yeinam*, the basic laws of *kashrut* must also be considered in the “*kashering*” of a wine.⁵ Acceptable kosher substitutes, such as chlorine, are used to replace products such as soap (animal-based) and vodka (grain-based), if for Passover, which are sometimes used in vat cleaning. Because most wines are made kosher for Passover, only wine yeasts which have not come in contact with cereal grain are used in the fermentation. In addition, kosher for Passover substitutes for products such as corn-based additives are also used. Other products which are normally used during the course of wine-making are not allowed in kosher wine. Examples of such products are certain fining agents used in clarifying wines, e.g., gelatin (an animal derivative), casein (a dairy derivative), isinglass (fish gelatin made from sturgeon [which some consider to be a non-kosher fish] bladders), and non-fat dry milk powder. The use of tartaric and metatartaric acids is debatable, since it is derived from wine, possibly a non-kosher wine. In Europe, certain non-kosher red table wines are fined with beef blood. (This practice is not allowed in the United States.)

The Position of the Conservative Movement

The Conservative Movement’s official position on wine is based on Rabbi Elliot Dorff’s responsum, “The Use of All Wines” (October, 1985),

4. Code of Jewish Law (*Kizur Shulhan Arukh*), Rabbi Solomon Ganzfried, ed. (New York: Hebrew Publishing Co.).

5. It should be noted that all products made from grapes are subject to the same laws governing wines (e.g., grape candy), because they are considered to have the potential to become wine.

which was adopted by the Rabbinical Assembly's Committee on Jewish Law and Standards in 1986. The responsum notes that the original prohibition of *yayin neseekh* was to prevent Jewish involvement with idol worship, which at that time was a familiar sight where Jews lived. Rabbi Dorff notes that Maimonides, as well as later authorities, excludes Muslims from the category of idolators in regard to this prohibition. Additionally, Rabbi Isserles says that Gentiles "in this time" are not idolators. While it cannot be shown that this comment was meant to include all of the world's non-Jews (since he did not have contact with the people of the Orient), it is safe to assume that this comment may be applied to the Gentiles of Western Europe and North America, from where most of our wines come. Though some existing cults might be considered idolatrous, few, if any of them, produce wines. If a Jew bought wine only from wineries known not to be associated with such cults (this would certainly include most, if not all, of the major wineries), there would not be any issue of idolatry.

As regards the prevention of mixed marriages through the avoidance of drinking wine made or touched by non-Jews, Rabbi Dorff argues that the problem of intermarriage is greater today than when the prohibition was issued. Yet, it seems doubtful that a prohibition on wine would be of any value in deterring such marriages. Few of those who intermarry keep kosher at all, much less adhering to the laws regarding kosher wine. In regard to the prevention of social contact between Jews and Gentiles, this, too, seems highly unlikely since observing such rules is often impossible in modern business and social contact. In keeping with modern life, the Conservative Movement holds that, barring intermarriage, Jews are encouraged to have social and business contacts with non-Jews.

Rabbi Dorff points out that many Jews who otherwise observe the laws of *kashrut* drink rabbinically uncertified wine, illustrating that, regardless of the *halakhic* status of non-kosher wine, the prohibition has fallen into disuse. He argues that this fact should simply be recognized and allowed to be.

What remains an issue is the *kashrut* of the materials used in the making of rabbinically certified wine, notably fining agents. Since fining leaves the wine clear, rather than cloudy, our ancestors often assumed that the fining agents did not leave a residue in the wine. Thus, many used non-kosher or dairy fining agents to clarify their own wines. It is only today, with modern chemical analysis, that it is possible to determine that some fining material remains in the wine even though it is not visible. There are several fining alternatives that would not affect the kosher status of a wine. These are filtration, centrifugation, and fining with kosher, *pareve* substances. Jewish law also permits the use of forbidden ingredients in foods as fining or clarification agents, when their purpose is to remove something from the food, rather than to become part of it, given that the intention is to remove the agent along with the impurities. Based on this view, whatever material is used to clarify the wine would be nul-

lified, provided that any residue after its removal is less than one part in sixty in volume; in such circumstances a wine would be considered kosher regardless of the nature of what is used to fine it.⁶ Rabbi Dorff suggests that, under these circumstances, individuals who find themselves in social or business situations where there is wine-drinking, may drink uncertified wine in good conscience. While Rabbi Dorff believes that restricting one's own home to rabbinically certified wine is preferable, he insists that those who use uncertified wines in their home should not be considered as Jews who do not keep kosher, just as those who are more strict in this matter should not be labelled fanatics.

Because of the problems surrounding the nature of uncertified wines, the Conservative Movement insists that only certified wines be used for sacramental purposes, at home as well as in the synagogue. In addition, the Movement encourages Israeli wines as being especially appropriate for sacramental use, to support Israeli industry, as well as to remind ourselves of our ties to Israel on these occasions.

Rabbi Dorff explains that the issue of using rabbinically uncertified wine in Conservative synagogues for social occasions is complex. While there are grounds for insisting that only a rabbinically certified wine be used for *kashrut* reasons, many Conservative congregations have accepted the practice of drinking rabbinically uncertified wine in their synagogues. Since such wine is not clearly forbidden, many rabbis feel that taking a stand on this issue would be unproductive, especially since there are many other clear and central religious goals to be attained. Rabbi Dorff maintains that the Conservative Movement is "... more interested in encouraging Jews to have kosher events and schedule their life cycle celebrations in the synagogue than ... on insisting on rabbinically certified wine, for the latter is only a higher degree of observance, while the former goes to the heart of what we want in Jewish practice." He insists that only rabbinically certified wine be used for the purpose of ritual, as well as during official Jewish community functions, where some participants are likely to demand kosher wine.

The Marketing of Kosher Wines

Kosher wine in America has long been associated with sweet, syrupy, Concord wine. However, during the past ten years, the American kosher wine market has undergone a revolution. Though the majority of kosher wines on the market are still predominantly the traditional Concord-style wines, premium wines, mostly varietals (e.g., Cabernet Sauvignon, Chardonnay, Chenin Blanc) are rapidly proliferating. One estimate puts the amount of premium kosher wines available on the American market today at two million cases (24 million bottles). While most Jews have been

6. Many major *kashruth* organizations permit pork gelatin as a clarification agent for apple juice.

slow to realize that there are other wines available to them besides the Concord wines, others find it difficult to accept a “good quality” wine as kosher; and, even if they do, they are unwilling to abandon tradition. (This is certainly the case with non-kosher Jews, who make up the majority of Jews in America, and who usually use kosher wine only for major Jewish holidays such as Rosh Hashanah and Passover.) Nonetheless, this is a Golden Age for kosher wines in terms of quality and diversity. New premium kosher wines are being imported from all over Europe: Austria, France, Spain, Italy, Hungary, and other countries. In addition, new, quality wines are being produced in the United States, among them several excellent California wines. Israel, too, has improved its wines, with new products competing successfully against (non-kosher) wines from around the world. There is an increasing demand for these wines from kosher consumers. Jews are becoming more sophisticated in their eating and drinking. Kosher restaurants abound, and there is an increase of *ba’alei teshuvah* (Jews returning to traditional observance) worldwide, demanding quality kosher wine to supplement their quality kosher cuisine. Even *mevushal* wines, whose cooked taste and aroma were once commonplace, are proving to be of remarkable quality.

Today, a sophisticated wine palate need not be inconsistent with the observance of Jewish *halakhah*. From Sauterne to Cabernet to Port Blanc, from white to red to rosé, the selection of kosher wines is simply tremendous.

The Meanings of Keeping Kosher: Views of the Newly Orthodox

M. HERBERT DANZGER

WHEN THE LUNCH BELL RANG AT MY father's small textile shop, he would leave his machine, proceed to the office where he would take out his brown bag lunch, spread its contents out on his desk, open a bottle of soda, and have lunch. He didn't even have to put on his *kippah* to make the "*mozi*" (the blessing before eating bread, concluding with: "*ha-mozi lehem min ha-arez*"), because he generally wore a baseball cap. When my daughter, an executive at a major Wall Street firm, "does lunch," she dines at a kosher restaurant in that center of financial power. If she doesn't have the time to go out, the kosher restaurant will arrange to send lunch in.

That difference, in how one "has lunch," demonstrates a sea change in how *kashrut* is experienced in our day. That difference, between grandfather and granddaughter, signals the second shift in two centuries to have major impact on *kashrut*. The first, of course, was political emancipation and the emergence, in Jacob Katz's term,¹ of the "neutral" society, one in which one need not be a Christian to be a Frenchman or an Englishman, but where one could simply be a Frenchman or an Englishman of the Jewish faith.

That turned *kashrut* from an uncritically accepted way of life to a matter of choice. Many Jews abandoned its practice, finding that it restricted their intercourse with the larger society which was now willing to associate with them. This association, limited though it might be, had an implicit proviso. It required that they behave, speak, dress, and eat like others. The social pressure for Jewish acceptance of the wider social norms was so powerful that not only were individual Jews caught up in it, but Jewish institutional life was irrevocably affected as well. Reform Judaism was born, and taught a Judaism of ethics stripped of ritual. *Kashrut* was emphatically abandoned at the "*trefa* dinner" celebrating the first graduation of the Hebrew Union College in 1883. Even ordinary Jews were abandoning *kashrut* and all of Jewish ritual at a rapid rate. While well over 80 percent of Jews arriving in America were Orthodox, within three generations that percentage fell to roughly

1. Jacob Katz, *Out of the Ghetto* (Cambridge: Harvard Univ. Press, 1973).

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10 percent.²

More recently, a second revolution in the larger society has affected *kashrut*. In 1900, women made up only 18 percent of the labor force; in 1990, they make up fully half of it. In fact, more than half of the women with children below the age of six work outside of the home.³ This has resulted in radical changes in kitchen work, dining habits, and food preparation, with implications for the practice of *kashrut*.

In the last generation, two other changes have had an impact on eating kosher. One, has been the increasing acceptance in American society of ethnic differences,⁴ with a resultant interest in ethnicity, so that Jewish foods, no less than other ethnic foods, are no longer automatically disparaged. The second is more subtle but, probably, just as important; it is the tendency for people to shift religious affiliation. Sociologists report that about one in four people practice a faith different from the one in which they were reared.⁵ I have studied newly Orthodox Jews in the United States and Israel,⁶ and have found that, in the United States, about one in four Orthodox Jews is new to its practice, having been reared in a home where *kashrut* was not practiced or where it was observed haphazardly.

Fifty years ago, or even thirty years ago, most people, Jew and non-Jew alike, prepared their meals at home and ate them in their home. As married women left home to join the workforce in the last generation, there has been an explosion in the availability of pre-cooked meals — not merely pre-cooked foods. Pizza, hamburgers, fried chicken, and Chinese takeout foods are now staples of the American diet, and fast-food chains have been among the most rapidly growing sectors of the economy in the last two decades. Eating out is now a way of life. Certainly, this reaches into kosher food as well.

Fifty years ago, *kashrut* was a ritual practiced in the home. Today, kosher Chinese restaurants, pizza and fallafel stores, hamburger and fried chicken joints, restaurants serving steak, shishkebab, and Middle

2. These figures capture the general trends in the structure of American Judaism. For studies of specific communities see Sidney Goldstein and Calvin Goldscheider, "Jewish Religiosity: Ideological and Ritualistic Dimensions," in Marshall Sklare, ed., *The Jew in American Society* (Behrman House, Inc., 1974), pp. 203-21, or Howard W. Polsky, "A Study of Orthodoxy in Milwaukee: Social Characteristics, Beliefs and Observances," in Marshall Sklare, ed., *The Jews: Social Patterns of an American Group* (New York: Free Press), pp. 325-335. Also see Marshall Sklare, Marc Vosk and Mark Zborowski, "Forms and Expressions of Jewish Identification," *The Jewish Journal of Social Studies* 17:205-218 (1955).

3. Federal Bureau of Labor Statistics.

4. See, for example, Richard R. Alba and Mitchell B. Chamlin (1983), "A Preliminary Examination of Ethnic Identification Among Whites," *American Sociological Review*, vol. 48, no. 2:240-247.

5. Frank Newport, "The Religious Switcher in the United States," *American Sociological Review*, 1979, vol. 44:528-52.

6. H. Danzger, *Returning to Tradition: The Contemporary Revival of Orthodox Judaism* (New Haven: Yale University Press, 1989).

Eastern style foods and soups, as well as kosher take-out places which offer entire Shabbat and holiday menus are a commonplace. They may be found in Boro Park and Flatbush in Brooklyn, in Miami, Chicago, Los Angeles, and elsewhere. And at the top of the food chain one finds such elegant restaurants as Levanah, Nanou, and Trastevere, in Manhattan, Royal Salute in Chicago, or Milk and Honey in Los Angeles, to name but a few. When sufficient numbers eat out, at times some want to dine elegantly. *Kashrut* has come out of the closet. The newly Orthodox are accepting a *kashrut* observance which is now public, upscale, and even often associated with healthful food.⁷ This is very different from a generation ago when *kashrut* was perceived as lower class, parochial, and restrictive.

While *kashrut* has some accepted meanings for those socialized into it, its meanings and the process of adjustment to it for the newly Orthodox, particularly in our changing times, holds some surprises. It has a "through the looking glass" quality, appearing to be one thing from one side of the looking glass and, yet, seemingly something else when one is on the other side.

The Biblical injunction to observe *kashrut* relates it to holiness (Lev. 11:43-45, Deut. 14:2-21) and suggests a Godly discipline to elevate man. Yet, for hippies "returning" to Judaism in the late 1960s and early 1970s it had a somewhat different, although not contradictory, meaning. Traditional Judaism seemed to have similarities to countercultural religions: its mysticism; its *hasidim* and *rebbeim*, whose relationship paralleled that of disciples and gurus; its special kosher diet, a parallel to the interest in macrobiotic diets and natural foods; a unique style of dress; and a far heavier emphasis on ritual than was found in established American religions, which was again paralleled by a similar emphasis in the Eastern religions to which hippies were attracted. The apparent congruences of these value systems seemed so attractive to those just beginning their "return" that the deeper divergences went unnoticed.

Macrobiotic food is an example. Kosher does not mean clean and it does not mean natural; it means prepared in accordance with Jewish ritual law. Chemical additives may make food unkosher, and, therefore, observant Jews are careful about such ingredients. But if the additives are themselves kosher it makes no difference whether they are "chemical" or "natural;" the food is kosher. Similarly, mixing meat and dairy products together in food, on a plate, or at a meal, is forbidden because this is symbolically "seething a kid in its mother's milk." But, while such

7. For many non-Jewish Americans, "kosher" now simply suggests high standards of purity and careful supervision. A company producing frankfurters touts itself as "answering to a higher authority" than the United States Department of Agriculture. Another, advertising its salad dressing as avoiding a long list of chemical additives, states that "only the finest all-natural ingredients" are used, and, as a final encomium, adds that five of the dressings are O-U kosher (*New York Times*, June 6, 1990).

a practice may be interpreted as suggesting a sensitivity to animal suffering, it does not require vegetarianism.⁸ Those committed to macrobiotic and vegetarian diets have found sufficient symbolism in Jewish dietary laws to believe that they support the values underlying their own diets. Since the laws and rituals are nowhere explained in terms of any fully authoritative philosophy, such beliefs are not easily contradicted. What is clear is that the food one eats is a *religious* concern in Orthodox Judaism as in other non-Western religions.

* * *

The practical consequences for social relations are another area where *kashrut* looks different from the different sides of the looking glass. When Jews are among fellow observant Jews, *kashrut* may be simply a holy discipline. When they are among non-Jews it becomes a barrier separating them. Accepting the discipline of *kashrut* implies also a major change in commitment and may require adjustments in many areas of life.

Those reared in observance, the "*frum* from birth," know that the complex rules of *kashrut* impose a discipline which, in the past, was felt primarily in the home. In modern mobile society, keeping a kosher home is the lesser problem. *Where* one may eat is the major difficulty. Travel is restricted by the need for kosher food. Business and professional relationships usually involve socializing and sharing food. The requirements of *kashrut* thus place a heavy burden on those who observe these rules in business and in recreational activities. Many less committed Jews often follow the practice of maintaining *kashrut* in the home but abandoning it, at least in its most demanding forms, when eating outside of the home.

Given the radical changes in values and lifestyles, what does it now mean for some individuals newly to accept the rules of *kashrut*? How does it impinge on their lives? What are the obstacles and the challenges to accepting these practices?

Among the *ba'alei t'shuvah*, the newly Orthodox, there is a sense that eating kosher involves one in a world where restrictions apply. This is captured by one *ba'al t'shuvah* about to enter a yeshivah for *ba'alei t'shuvah*:

I had been to yeshiva before and knew what eating kosher was. The night before I was supposed to go into yeshiva a group of friends and I went down to have cheeseburgers and shakes. We really stuffed ourselves on it, really ate like pigs. We all knew this was going to be the last time

8. Interestingly, interest in macrobiotic food and vegetarianism has raised these issues to some extent in the Orthodox community as well. Whole wheat *hallah* is no longer strange; *cholent*, traditionally made with meat, may now be cooked with tofu and, hence, be vegetarian. One occasionally hears sermons alluding to the view that meat was permitted to man only reluctantly. In a recent book, *Vegetarianism and the Jewish Tradition* (New York: KTAV, 1983), Lewis Berman argues that vegetarianism is endorsed by the Bible.

I would eat it and I wanted just one more fling. To tell you the truth, I don't have any problems eating kosher here in Israel, but I still would like a nice cheeseburger. I wish it could be kosher.

For this *ba'al t'shuvah*, now living in Israel and studying at a yeshivah, the challenge of *kashrut* was simply appetitive. He wanted to savor the taste of some foods again, but his new commitment meant that these delights would be forsworn. For this man, *kashrut* posed few social problems. He ate with his fellow students at the school, and there he did not need to trouble himself about the acceptability of the food. Eating out in Jerusalem also presented few difficulties: kosher food is available virtually everywhere, from kiosks to elegant restaurants. Actually, one has to seek out non-kosher restaurants in Jerusalem. Maintaining a kosher home presented some problems, but they were easily surmountable. He required two sets of dishes and pots, for meat and dairy, and additional shelf space and alertness to avoid mixing the two or even washing them together. He had to exercise some care in the supermarket because imports and a few locally packed products are questionable. But the practice did not put him in a social bind. On the contrary, as his fellow students, friends, and neighbors kept kosher, it was necessary for him to keep kosher also in order to maintain his social circle. Both the yeshivah dining hall arrangements and his location in Jerusalem made eating kosher a natural fact of life, involving little struggle.

A very different assessment of the obstacles to keeping kosher emerges in discussions with those who never enter a yeshivah but make the transition to *kashrut* observance while living with their parents. Keeping the laws of *kashrut* then becomes a major source of tension, not only with parents but with other siblings as well.

Parents and the newly observant may become embroiled in conflict. "Conditions" may be set — "only if you buy new dishes," "only kosher foods," etc. The laws of *kashrut* can cut children off from parents, siblings, other relatives, and former friends at social, familial, and even religious occasions. Certainly, they eliminate the casual family outing to the local Chinese restaurant or to MacDonald's, the hot dog at the beach, and even the occasional ice cream (unless it's kosher). It cuts the individual off from the home on a daily basis, even when the parents accommodate by providing the *ba'al t'shuvah* with a "shelf in the refrigerator" and some pots and dishes of his or her own. Whereas, prior to this "conversion," eating together was a source of cohesion, the separation of food, dishes, and so forth, is a constant reminder of difference and distance.

Beyond this, the *ba'alei t'shuvah* may refuse to participate in those holiday and ceremonial celebrations of the family in which *all* have previously participated: in the family Seder, in a family wedding, in the

most central family occasions. Relations are disrupted with friends and those members of the family who may not observe the same rules.

It's very difficult. When I go home I have a shelf in the refrigerator. I keep some pots and dishes at home and I use them whenever I'm there. I *kasher* one burner of the stove and my mother doesn't use it, so I can cook kosher food. But my father eats my stuff sometimes even though I can't eat theirs, and in general he's annoyed at my keeping kosher.

Another respondent reports:

It's always a fight. They don't like me to keep kosher. You know how it is. A Jewish mother likes to feed her son. But it's not really kosher. My mother says it is, but it really isn't. So I don't eat her food, and she is really angry.

Sometimes adjustments are made in the long run:

For a while it was awful. But then we worked it out. My parents *kashered* the house and they keep two sets of dishes. They have become somewhat committed, but not fully. The house is kosher, but they still eat out almost anywhere. They don't eat pork or shellfish, but they don't follow the rules of *kashrut*.

An almost equally knotty problem is encountered with other relatives.

I don't have much family and I've always been very close to my two cousins. We'd go to their house for holidays, or they would come to mine. My mother was partly religious — traditional, really. I became Orthodox as a young man, and over the years we've become stricter about observance. My wife and I are pretty careful about *kashrut* now. I still want to be close to my cousins, but it's become much harder. They came to my house last year for Thanksgiving and this year Louise wants to reciprocate and have it at her house. But what should I tell her? If I say I can't go she'll be hurt and never come to us again. She suggested that we could prepare the food at her house, but that's almost impossible. I'd have to bring my own dishes and pots and then *kasher* her stove. She says she'll do whatever I'd like but she doesn't realize how difficult it would be and she is sure to resent it. I don't know what to do.

Sometimes, the parents, too, become returnees, brought to religion by their child's observance. This certainly relieves the strain for the *ba'al t'shuvah* and may strengthen family bonds.

The decision to eat kosher is, therefore, more than an acceptance of a new discipline in life. It involves a willingness to give up not only a variety of worldly activities but also to give up important social ties. In sociological terms, it involves an implosion of social relations until new ties are established. It is paradoxical that Orthodox Judaism, with its emphasis on family and community, which also are a major source of its hold over its followers, should cause the estrangement of the newly Orthodox from their friends and family. Yet it is so, and this tends to mark off those who become Orthodox from the "born again" in other faiths, and even from Jews who have simply become more traditional or observant.

It is no accident that yeshivot for *ba'alei t'shuvah* provide dining facilities for their students. Without the dormitory, and without the yeshivah's kitchen, which provides kosher meals, the life of the *ba'al t'shuvah* becomes immensely complicated. The kosher dining hall is far more than an amenity; it is essential in facilitating the observances of traditional Judaism for the newly observant.

Thus, at Yeshiva University, newly Orthodox students do not find it difficult to accept the laws of *kashrut*. The school provides kosher meals for its students, and several small restaurants in the area provide kosher pizza, hamburgers, and the like. In contrast, Rabbi Ephraim Buchwald of the Lincoln Square Synagogue on the West Side of Manhattan finds that a good part of his time is devoted to advising the newly Orthodox on how to keep a kosher home, on the *kashrut* of various products whose ingredients and whose arrangements with supervisory organizations are constantly changing, on which restaurants and hotels are kosher, and to *kashering* kitchens (ritually cleansing them so that kosher food may be prepared in them). Despite all of these efforts, Rabbi Buchwald commented, he is aware that a number of congregants eat at places where non-kosher foods are served and eat foods whose *kashrut* is questionable.

Interestingly, eating at kosher restaurants has unique advantages for the *ba'al t'shuvah*. At least at a kosher restaurant one is not eating from one shelf in the refrigerator on paper plates, or eating cold food because the stove has not been *kashered*. At a kosher restaurant one can eat "like everyone else," have dinner with friends, whether or not they keep kosher. Perhaps the major advantage is that precisely because observant Jews are compelled by their commitment to patronize kosher restaurants, this is an excellent place to meet other people who are Orthodox. In a way, the restrictions on eating out provide an advantage for the *ba'al t'shuvah* that are less useful for those who have been Orthodox from birth. They provide a valuable opportunity to socialize with the Orthodox, to enter their intimate world, to make friends, and even to find others to date and to marry. This advantage seems to mitigate the *ba'al t'shuvah*'s feeling of restriction.

* * *

What do the yeshivot for *ba'alei t'shuvah* advise students returning to non-kosher homes to do? Interestingly, strict standards (observance of *humras* (strict rulings)) are not advised. Most traditionalistic rabbis and yeshivot advise returnees to use as lenient a standard as possible. Yet, even minimal *kashrut* standards may be too burdensome for some parents, and they may believe that their child is demanding the strictest rules at the behest of an uncompromising rabbi. Sometimes children do use religion as a club in a broader conflict with parents, who are held to the strictest standards, and, at times, strict interpretation of the law is demanded by the rabbi or the yeshivah. But, in general, the

normative requirements of *kashrut* are weighed against the requirement to love and obey parents.

It is probably true that the more traditionalistic and sectarian yeshivot hold to a more rigorous rule for *ba'alei t'shuvah* to follow in their parents' home, and thus engender more conflict with parents. But one should not assume, therefore, that the more modernistic yeshivot press the *ba'al t'shuvah* to compromise.

At a number of yeshivot, I asked how the *ba'al t'shuvah* is advised to deal with *kashrut* when returning to his parental home. All of the answers were couched in terms of what sorts of compromises the *ba'al t'shuvah* is advised to make: paper plates, pre-cooked kosher meals, cold foods, and so forth, or advice on how to *kasher* a part of the kitchen.

Yet, the late Rabbi Morris Besdin, Dean of the James Striar School at Yeshiva University, turned this around.

"You know," he said, "I learned how *kashrut* should be treated when I served as a chaplain in the U.S. Army during World War II. My colleagues were Protestant ministers and Catholic priests. One of the priests, a friend of mine, was particularly adamant that we Jews be able to follow our observances.

You know what I say to that parent? I ask them, if you were to have a Catholic priest to dinner on Friday and he indicated that he did not wish to eat meat for religious reasons, would you insist that he eat meat? You wouldn't, because you would want to show tolerance for the other person's beliefs. You would show respect. It is the American way.

Why shouldn't you treat your son or daughter the same way? Shouldn't you show them the same respect too? It's the American way. Should Judaism be treated less respectfully than other religions?"

This aggressive defense of the *ba'al t'shuvah's* requirement for *kashrut* by a modernistic yeshivah is based on American values, not on an appeal to Jewish values. Traditionalistic yeshivot have also come to learn the usefulness of this sort of appeal and now apply it widely. Nevertheless, even the aggressive style of argument is tempered by leniency in interpreting the laws of *kashrut* when dealing with parents.

* * *

Kashering the home also suggests some substantial difference in perspective between the "*frum-from-birth*" and the *ba'al t'shuvah*. While many of the observant feel so strongly attached to Shabbat that one often hears "Even if I didn't believe, I'd still keep Shabbat," the same is not said of *kashrut*. Many Orthodox women see *kashrut* in the home as a burden. The two sets of dishes, pots, and pans are expensive. Storage for them is troublesome. And then there are the additional two sets of dishes for Passover, making storage a nightmare. Some also have two sinks and two dishwashers, one for meat and one for dairy. The astonishing growth of kosher take-home food stores that specialize in Shabbat and holiday meals and the explosion of glatt kosher Passover hotels and cruises testifies to the fact that these preparations are seen as an immense and onerous burden by Orthodox housewives.

One would imagine, therefore, that *kashering* the home would be an obstacle to becoming Orthodox. But Rabbi Ephraim Buchwald reports that he often has to resist entreaties of newcomers that he *kasher* their homes. He urges them first to learn more about Orthodox Judaism. Moreover, when he does *kasher* a home, he apparently does it with meticulous concern for every detail, going beyond the strict level required. The point of Rabbi Buchwald's efforts can be seen in a remark that he made:

In this community, people sometimes push to have their kitchens *kashered*. I try to hold them back if I think they are not ready for it. But they want to have guests, they've made friends in the community and want to entertain them. *Kashering* a kitchen is like giving someone a seal of approval. It's almost as though the rabbi has said that now that its *kashered* you can eat there. It's not so, of course. You still have to know whether the person is seriously committed. But some people think that's all there is to it.

Kashering a home may simply be an effort to find the social acceptability necessary for entry into this society. For those who have newly become Orthodox in the Lincoln Square Synagogue community, *kashering* by a rabbi is almost a public declaration that one has made the transition. It enables the homemaker, man or woman, to have guests for dinner or for Shabbat, to become a fully participating member of the community. Perhaps for this reason, Rabbi Buchwald hesitates to *kasher* a home unless he feels reasonably certain that the person is serious about maintaining *kashrut*.⁹

* * *

The practice of *kashrut* is a basic element in *building* commitment to Judaism. Whereas one is a believing Christian, one is an *observant* Jew. The building blocks of commitment to Judaism are its rituals rather than elements of faith. Yet, if rituals establish a "ground of meaning" for their practitioners, how does it occur?¹⁰ How it occurs with regard to *kashrut* seems particularly problematic, since its practices offer so many different meanings as they play themselves out in different social contexts. However, that would require still another article, and I leave that for another occasion.

9. Other rabbis are far less strict when asked to *kasher* a home. This is not simply a matter of interpretation of the law, although that may well be a factor. It goes beyond this, to how one sees the functions of *kashering* a home. In the one view, it simply facilitates a person's observance of the commandments. In the other view, the person can get along quite well and probably manage to eat kosher food without having the rabbi *kasher* the kitchen. However, by having the rabbi *kasher* it, he gives, in effect, the stamp of legitimacy to a person, allowing him or her to entertain others who are concerned with *kashrut*. Rabbi Buchwald hesitates to do so unless he is persuaded of the sincerity of the person. How sincere people have to be before they are accepted has been controversial in Judaism for over two thousand years (See B. *Berakhot* 28a).

10. See M. Herbert Danzger, *Op. cit.*, pp. 128-33 where I describe some of those social-psychological processes.

Challenges to Sheḥitah in Europe

BEREL BERKOVITS

The Campaign Against Sheḥitah in Europe, 1984-1990

THE JEWISH METHOD OF SLAUGHTER, *sheḥitah*, is not (in essence) a controversial procedure. It is true that its precise definition, and the rules governing it, are the subject of very detailed regulations in the *Shulḥan Arukh* and standard codes of Jewish law, but in terms of its routine application, it would seem to be a morally neutral and relatively uncomplicated procedure. It involves the extremely rapid severance of the trachea and oesophagus, simultaneously also cutting the carotid arteries and jugular veins, with a special knife honed to exquisite sharpness and smoothness (the slightest notch in the knife will invalidate the *sheḥitah* and render the meat non-kosher). The *shohet* who performs the incision is trained for a very lengthy period, and *sheḥitah* carried out by a qualified *shohet* is a skilled operation akin to a surgical procedure. Certainly it far exceeds, in terms of its precision and care, any method of slaughter practised in the known world for the past hundreds (indeed, thousands) of years. And it compares very favourably with modern slaughter practices, in which unskilled and untrained abattoir staff dispatch animals with maximum speed, so as to increase productivity and economic efficiency. *Sheḥitah*, by contrast, is a specific procedure effected individually on each animal or bird, in an atmosphere in which pressure and speed of “production” are totally prohibited. The *shohet*, in any event, being a salaried employee, does not have an incentive to increase productivity. This contrasts sharply with the piece-rate system adopted in commercial non-Jewish abattoirs.

Nevertheless, *sheḥitah* has become a controversial and highly emotive subject. It has been the target of numerous attacks in many European countries, many of which have attempted to pass legislation which would effectively prohibit it. Often the proposed legislation professes to maintain the right to practise *sheḥitah*, whilst merely superimposing a requirement that the animal (or bird) be stunned before the *sheḥitah* incision. Without going here into technical halakhic argumentation, it is clear beyond doubt that the present methods of stunning (captive bolt pistol or electrical stunning) render the animal non-kosher even if a perfect *sheḥitah* is subsequently effected. Consequently, the proposal that *sheḥitah* be preceded by stunning the animal is tantamount to proposing that *sheḥitah* be outlawed.

Why has the “battle” around *sheḥitah* become such an emotive issue? A number of complex factors interact here with one another, and it is the combination of these factors which have created an especial sen-

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sitivity. From one point of view, the issue is a purely pragmatic one. Since Jewish law prescribes that meat may be eaten only if slaughtered properly by means of *shehitah*, any ban on *shehitah* would deprive observant Jews of meat. Whilst Judaism, on the whole, does not mandate the consumption of meat (and there is ample authority to support the view that it is, indeed, merely a concession to man's carnivorous nature), it equally does not insist upon vegetarianism for those who wish to eat meat. A ban on *shehitah* would compel observant Jews to forego eating meat — clearly, an intolerable and unwarranted intrusion into individual freedom.

But the passions aroused by the *shehitah* debate cannot be attributed merely to strong views on the merits of vegetarianism (even though that, in itself, is a subject which tends to engender fierce and sometimes irrational viewpoints). Long before vegetarianism became an issue, *shehitah* was the subject of fierce attack. In many cases, it is clear that the underlying motive was simple anti-Semitism, reinforced, very often, by the crude designation "ritual slaughter," and one need not look to the example of Nazi Germany (one of whose first legislative acts was the banning of *shehitah*) for historical examples. Attacks on *shehitah* are particularly "effective" forms of anti-Semitism. In the first place, they make life difficult for Jews, by depriving them of meat. Secondly, they weaken the entire Jewish communal structure, since the income obtained from "*shehitah* fees" often went to support many other communal institutions. In many communities it was *shehitah* which supported almost every other communal activity. Thirdly, attacks on *shehitah* also constituted attacks on Judaism itself, since *shehitah* is a hallowed *mizvah* of the Torah, underpinning the entire structure of *kashrut*. If the Jew alleged that the Torah was a Divine blueprint for the Jewish people, and that *kashrut* ennobled and sanctified Jewish life, the opponent of *shehitah*, by outlawing it as an "inhumane" or inferior method of slaughter, was *ipso facto* declaring that the Torah was defective, and not Divinely-mandated. Attacks on *shehitah*, therefore, constitute an attack on the Jewish spiritual ethos as much as on the practical Jewish way of life. By describing the principles of *shehitah* as "symbolic," "cultural," or "hygienic" in origin or nature, recent opponents of *shehitah* have not only failed to understand the system in its own terms, but have also contributed to a weakening of its spiritual significance.

That is not to say that all opponents of *shehitah* are anti-Semitic, or that all those who ignore its religious significance are hostile to Judaism. Western society, with its separation between Church and State, and its relegation of religion to Divine worship and dogma, has a peculiar difficulty in comprehending a religion in which there are rules prescribing what one may and what one may not eat, and in which the rules have the status of binding legal norms. Hence, many ordinary members of the public sincerely believe that *shehitah*, for Jews, is simply

a cultural tradition whose abandonment or reform is a relatively simple matter of rabbinic will. The Moslems, with their structure of *sharia* and *hadith*, are much more able to understand the significance of *shehitah* than the most well-intentioned Christian. Unfortunately for us, however, Muslim slaughter, or *dhabh*, whilst bearing certain superficial similarities with *shehitah*, is, in reality, so different — and so inferior — that we cannot join forces with them in our battle for *shehitah*. Indeed, we often find ourselves tarred with the same brush by non-discriminating opponents of all forms of religious slaughter.

Many ordinary people, moreover, are won over by superficial and emotive arguments allegedly based on “animal welfare.” They assume, without examination, that ordinary slaughter is, indeed, “humane” slaughter, in which animals are magically slaughtered without any pain, discomfort or unpleasantness. Indeed, many of them (those who accuse Jews of “bleeding animals to death”) somehow imagine that non-Jewish slaughter is a bloodless process, and that the hygienically-wrapped and symmetrically shaped piece of meat which appears on the supermarket shelf has no connection with the moving, sentient animal entering a slaughterhouse. These are the people who imagine that Jews dispatch their animals by means of some primitive, barbaric mumbo-jumbo ritual, in which the animal writhes in long agony whilst a cruel slaughterman calmly watches the gory spectacle. Painted in these vivid colours, and supported by all the emotive rhetoric of the animal welfare lobby, it is no wonder that the average, uninformed member of the public is automatically prejudiced against *shehitah*. Recently, in Britain, we have seen the phenomenon of supermarket chains refusing to supply “ritually slaughtered” meat.

All this, of course, presupposes a morally-schizophrenic society, in which the cruel abuses involved in hunting, gaming and blood sports are cheerfully tolerated as part of an acceptable national ethos, whilst *shehitah* is denounced in the most strident tones; balance and perspective hardly feature in the argument. And it seems highly paradoxical that our society tolerates with apparent equanimity — and indeed encourages — practices of mass rearing and production of animals, in truly appalling conditions, throughout an often short and pathetic lifetime, whilst reserving its opposition for what is, at most, a few seconds of unproven pain.

And here we come to the scientific evidence. Opponents of *shehitah* have often cited scientific data to uphold their contentions, as if the matter were one of clear-cut and unequivocal issues susceptible of categorical scientific proof. But there is, in reality, very little which can be proven by scientific experiments. Much of the data is uncertain, the premises unknown, the conclusions hypothetical, and the experiments based on particular factual situations which may not be relevant in different circumstances. Dr. Neville Gregory, one of the leading Brit-

ish researchers, whose work is often quoted in anti-*shehitah* literature, has admitted to me, in private conversation, that there is no scientific data against *shehitah* as such. Similarly, Temple Grandin (a leading American expert) has confirmed to me that she believes *shehitah*, properly performed, to be as humane a method of slaughter as any other. And yet the impression is still often given (either deliberately, or through simple ignorance) that science has “tried” *shehitah* and produced a verdict of “guilty.”

Events in Great Britain

The recent pressure against *shehitah* in England began in 1984, with the publication by a Government-established body, the so-called “Farm Animal Welfare Council,” of a report on the welfare of livestock when slaughtered by religious methods. This report was critical of religious slaughter methods (it did not differentiate between the Muslim and the Jewish method of slaughter) and recommended that the Government impose a requirement of pre-stunning on all meat slaughtered by religious methods. It also sharply criticised the revolving casting pen currently used for cattle in Britain (a pen recently described by the Royal Society for the Prevention of Cruelty to Animals [R.S.P.C.A.] as “barbaric,” despite the fact that it was the R.S.P.C.A. which had it introduced here in the 1930’s!) and called for the introduction of a standing pen (based on the Cincinnati model). Finally, and most controversially, it called for the labelling of all meat produced by *shehitah* as “ritually-slaughtered” meat.

The Report occasioned a heated debate in England. On the one hand, there were those who saw it as expressing the ultimate authoritative view on the subject (ignoring the fact that none of its authors were scientists, that they did not at any time consult with representatives of the Jewish community, and that many of its presumptions and conclusions were clearly flawed). On the other hand, the Jewish (and Muslim) community saw it as an offensive, and potentially dangerous document, which placed the philosophically dubious concept of animal rights over and above the very real requirements of preserving religious freedom and fundamental human rights. For Jews, in particular, who have always emphasized the importance of preventing *za’ar ba’alei hayim* (unnecessary pain to animals), the implied slur on Judaism’s standards was particularly hurtful.

The Report’s recommendations requiring stunning and labelling were rejected during 1989, but the invidious labelling requirement is under renewed study by a Government-appointed committee. Moreover, the Government recently called for the replacement, within two years, of all casting pens by standing pens; the latter’s halakhic status

will depend on its permitted or required design, which remains unspecified.

The British government is pushing ahead with regulations in response to the Farm Animal Welfare Council report. Among its requirements are: 1. that *shehitah* would be carried out as soon as possible after restraint; 2. the "occupier" of the slaughterhouse must ensure that the *shohet* is "ready to make the incision immediately the animal is placed in the pen"; 3. the knife used must be sharp, undamaged and of sufficient size; the British regulations also require inspection by the *shohet* (which is, anyhow, the norm) "before each animal is slaughtered"; 4. the animal may not be moved "before it is unconscious," and in any case for at least 30 seconds in the case of cattle, and 20 seconds in the case of sheep and goats; 5. a *shohet* who has worked for less than 3 months should be supervised by an experienced *shohet*; 6. the animal must be contained in the pen "without discomfort," the pen should be capable of protecting the animal "from injury or unnecessary distress," the animal should not be "other than in an upright position," and the pen should contain an effective means of restraint (including a head restraint) and "a means of support" to "take the weight" of the animal. It should be noted that the British regulations expressly allow the present method of placing sheep on their backs on a cradle or table. They do not allow installation of any new revolving pens unless they are by way of "replacement." Finally, the British regulations define the act of incision, in relation to animals, as "severance . . of both . . . carotid arteries and both . . . jugular veins."

Events in Sweden

Recent events in Sweden are quite disturbing. A proposed law requiring the stunning of all animals and poultry before slaughter is tantamount to a complete ban on *shehitah*. Even though it was not formulated as an explicit measure against *shehitah* and even if it was not based on anti-Semitic motivations, the mere fact of the legislation and the practical consequences which follow from it, means that it is, in practice, a ban on *shehitah*.

The Swedish measures would directly affect the lives of all Jews in Sweden who wish to observe *kashruth*. Even though this is a relatively small number, the measures would cause unnecessary hardship to law-abiding Swedish citizens. Moreover, there is a "ripple effect" in all matters affecting *shehitah*. The opponents of *shehitah* in any one country point to successes in other countries as indications of the correctness of their views. This is particularly true in relation to the European continent, where standardisation in the E.E.C. means that all countries are affected by developments in each. Thus, even though Sweden is not

a member of the E.E.C., events there still may have an effect elsewhere in Europe.

Opponents of *shehitah* who are motivated by anti-Semitism are fond of quoting the example of "liberal" or "democratic" countries which have outlawed *shehitah* as "proof" that their efforts are not motivated by anti-Semitism. If Switzerland, Iceland and Norway can all forbid *shehitah*, it follows (so the argument goes) that the anti-*shehitah* campaign cannot be racially-motivated. Of course, this argument is absurd as a matter of simple logic.

The argument from liberal or democratic countries is also historically incorrect. The Swiss anti-*shehitah* campaign, for example, was heavily motivated by overt and covert anti-Semitism. So, too, was the Norwegian law of 1929 requiring stunning before *shehitah*.

Despite the clear historical evidence, however, the argument by anti-*shehitah* lobbyists still manages to influence the average man in the street, as undoubtedly they would be able to point to the example of liberal Sweden as vindication of their constant claim that anti-*shehitah* agitation is consistent with liberal democratic values. This would conveniently ignore the fact that no country in the world requires pre-stunning of poultry, and that the head of the Swedish Agriculture Ministry's animal welfare section has publicly conceded that the ban was proposed without carrying out a scientific study.

Fortunately, the Swedish pre-stunning requirement was dropped in early 1989, but the threat of such a law and the sentiments that underlie it remain of concern to Jewish communities everywhere.

The European Convention on Human Rights and Shehita

What can be done to challenge anti-*shehitah* measures should they ever become law in individual European countries? It is possible, in my view, to challenge such legislation on an international level, through the mechanism of the 1950 European Convention on Human Rights, which is an international instrument "of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law" (Preamble to the Convention). It sets up a mechanism for adjudication and enforcement: a European Commission of Human Rights, and a European Court of Human Rights (Article 18).

How does the Convention work? For our purposes, we are concerned with the power of individuals, or organisations (group of individuals) to complain of a breach of one of the rights guaranteed by the Convention. Unhappily, the mechanism for bringing a case to the European Court is a laborious and protracted one, involving various processes. Moreover, there is no direct means through which an individual or group of people can bring a case to the attention of the Court;

it must go through the medium of the Commission. Nevertheless, the Convention is effective, and many cases are raised under its provisions. In 1987, for example, 860 individual applications were registered with the Commission. Sweden is a party to the Convention, as are also Iceland, Switzerland and the United Kingdom. Sweden has also recognised the competence of the Commission to receive individual petitions, as well as the compulsory jurisdiction of the Court.

In a sense, the individuals whose rights are most directly affected by the prohibition of *shehitah* in Sweden are the *shohtim*, whose source of livelihood is removed at a stroke. Unfortunately, however, neither the Convention itself nor the eight subsequent Protocols to the Convention protect a person's right to employment (although this is one of the rights covered in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights).

However, Article 9 (1) of the European Convention, provides as follows:

Everyone has the right to freedom of thought, conscience and religion; this right includes ... freedom ... to manifest his religion or belief, in worship, teaching, practice and observance.

Article 9 (2) provides:

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

The first question which has to be considered is "Does Article 9 (1), in effect, guarantee Jews the right to practise *shehitah*?" Or, to put it in another way: "Is the ban on slaughter without stunning a breach of the freedoms guaranteed under Article 9 (1)?" In my opinion, the answer to both these questions is almost certainly "yes".

Opponents of *shehitah* will doubtless counter this argument by alleging that the Torah does not actually oblige us to eat meat. If we so wish, we can all be vegetarians; *shehitah* is merely the method of slaughter we must use if we wish to eat meat. And the European Convention does not guarantee a person's right to eat what he fancies. But this argument is disingenuous. Rights invariably relate to optional activities.

Can the law imposing pre-stunning nonetheless be justified by the provisions of Article 9 (2) of the Convention? Here, again, the answer appears to be "no." The European Court has held that, apart from special situations (such as imprisonment) which impose inherent limitations, there can be no departure from the freedoms guaranteed in the Convention other than those spelled out in the Convention itself. States are allowed a "margin of appreciation" (i.e. a degree of discretion)

in interpreting the Convention, but they clearly cannot go beyond the express wording of the Convention.

Article 9 (2) allows exceptions from the right to manifest one's religion *only* (a) in the interests of public safety; (b) for the protection of public order, health or morals; or (c) for the protection of the rights and freedoms of others. It seems clear that none of these exceptions is applicable to *shehitah*. No exception is made in the interests of, or for the protection of, the welfare of animals, and in any event it would have to be shown that pre-stunning does, in fact, promote the welfare of the animals. The scientific evidence on this is, as is well-known, ambiguous and equivocal. Certainly, the scientific case for pre-stunning poultry has not been established.

Shehitah and the E.E.C.

Even more serious, perhaps, than threats to *shehitah* arising in individual countries is that which affects almost the whole of Europe. Its source is a "Draft Regulation" prepared by the E.E.C. Commission, for submission to, and approval by, the E.E.C. Council. If approved, it will bind all twelve Member States of the E.E.C. (Belgium, Denmark, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom).

The E.E.C. (which stands for "European Economic Community"), came into being in 1957 when the "Treaty of Rome" was formulated. Like the European Convention on Human Rights, its establishment was a result of the Second World War, and the desire amongst European nations to replace hostility and age-old antagonisms with co-operation and mutual agreement. Unlike the European Convention, however, which aspired, from the start, to protect individual human rights and fundamental freedoms, the Treaty of Rome aimed merely at establishing a unified economic entity, or "Common Market," which would encourage peace and stability by means of the enlightened self-interest of the parties. The concept, in itself, appears positive in nature, even if it was not motivated by principles of *hesed* or altruism.

The Treaty of Rome prescribes the framework of the E.E.C. Organisation. It also spells out its basic policies, and enacts the fundamental legislation which gives it legal credibility. Essentially, there are four distinct organs (or "institutions") which constitute the E.E.C.; the Commission, the Council, the Assembly, and the Court of Justice.

The Commission is in some ways the most significant of the four organs. It consists of a "college" of seventeen members, who are appointed for four-year periods by the common accord of the governments of Member States. The Commissioners, however, do not represent their governments; they are completely independent and answerable only to the European Parliament. The Commission acts as "guard-

ian” of the Treaty of Rome, ensuring that its provisions are applied, and instituting inquiries into alleged infringements. More significantly, however, it initiates policy, by formulating recommendations, and it also has certain legislative powers. There is also a special Commission division dealing with agriculture.

The second organ of the E.E.C. is the Council, which consists of the Foreign Ministers of the twelve countries, or the appropriate ministers for the relevant specialist Council meeting. (*Shehitah*, for example, comes under the heading of “agricultural policy”, so that it would be discussed by the various Ministers of Agriculture of the twelve states.) The members of the Council are delegates of their governments and, accordingly, are bound by precise instructions from them. The Council’s main functions are to ensure the co-ordination of the general economic policy of the various Member States, to take decisions, and to exercise the jurisdiction conferred on it by the E.E.C. Treaty. In relation to *shehitah*, for example, it is the Council which is empowered to take action.

The “Assembly” of the E.E.C., which has come to be known as the European “Parliament,” consists at present of 518 members. It is essentially a political body, but it has some influence over legislation as well, as it has to be consulted before the Commission or Council can pass legislation.

Finally, there is the Court of Justice, which consists of thirteen judges and six “advocates-general.” The function of the Court is to ensure that E.E.C. law is applied properly, and to render authoritative interpretations of the law. In this context, the Court can also review the validity of an act of the Commission or Council, and decide whether it conforms with the Treaty.

There are two main provisions of the E.E.C. Treaty which are capable of affecting the law on *shehitah*. In the first place, there is the general provision in Article 5 of the Treaty which obliges all Member States to take “all appropriate measures . . . to ensure fulfillment of the obligations arising out of this Treaty or resulting from action by the institutions of the Community,” as well as to “facilitate the achievement of the Community tasks,” and to “abstain from any measure which could jeopardize the attainment of the objectives of this Treaty.” In short, this Article obliges all members of the E.E.C. to comply with the Treaty and all actions taken under it. It is clear that, from the point of view of the E.E.C. itself, all E.E.C. law is binding on Member States and over-rules any national legislation to the contrary. E.E.C. legislation on *shehitah*, for example, takes precedence over any British legislation (subject to comments I shall make later). Britain, therefore, as a member of the E.E.C., is obliged by virtue of E.E.C. law (and, since the English “European Communities Act” of 1972, under British law) to comply with any E.E.C. rules on *shehitah*. In the case of *R. v. Minister of Agriculture ex parte Federation de la Sante Animale* [1988] 3 CMLR 661, it

was held that national courts (for example, English courts) have no jurisdiction to declare that measures taken by E.E.C. institutions are invalid.

The other significant provision in the E.E.C. Treaty is that contained in Article 189, that "in order to carry out their task, the Council and the Commission shall, in accordance with the provisions of this Treaty, make regulations, issue directives, take decisions, make recommendations or deliver opinions." In the context of *shehitah*, we need be concerned only with directives and regulations. Both of these, in fact, are legally binding, but there is a difference in the manner in which they work. A *directive* binds the Member States to which it is addressed "as to the result to be achieved," but leaves to the national authorities "the choice of form and methods." The overall aim of the directive, in other words, is legally binding upon the state concerned, and has to be implemented by it, but there is a degree of flexibility as to exactly how this is done. A *regulation*, by contrast, is automatically binding in its entirety, and is directly applicable in all member states without the need for any enactment, or the possibility of any flexibility. A regulation of the E.E.C., in short, automatically becomes part of English law.

There are, at the moment, two European provisions which directly affect *shehitah*. The first of these is a Council Directive (No. 74/533 of November 7th 1974) on Stunning of Animals before Slaughter, providing, in essence, for stunning of all animals, followed by inducing death "as rapidly as possible . . . in accordance with appropriate procedures." In its introduction, or preamble, it states that "the Community should . . . take action to avoid in general all forms of cruelty to animals," and "as a first step . . . to avoid all unnecessary suffering on the part of animals when being slaughtered." It then goes on to say, however, that ". . . it is necessary to take account of the particular requirements of certain religious rites," and, accordingly, Article 4 of the Directive itself states: "The present directive does not affect national provisions related to special methods of slaughter which are required for particular religious rites." In other words, the general requirement of stunning imposed by the directive does *not* apply to *shehitah*, or at any rate does not affect *shehitah* in those countries whose national legislation permits it without stunning. This is a welcome recognition, in practice, of the needs of Jewish communities (even though it stops short of saying that *shehitah* is intrinsically a humane method of slaughter, and that, therefore, stunning would, in any event, be unnecessary).

The other European provision affecting *shehitah* is that contained in the 1979 so-called "European Convention for the Protection of Animals for Slaughter." Unlike the 1974 directive, this is not an automatically binding legal E.E.C. document, but is, instead, a voluntary treaty drawn up by the Council of Europe (the Council of Europe is another

European organisation, set up in 1948, and currently including twenty-two countries. All member-states of the E.E.C. also happen to be members of the Council of Europe. It should be noted that the European Convention on Human Rights was also established by the Council of Europe). The Convention is far more detailed than the 1974 E.E.C. directive, and aims at protecting animals which are to be slaughtered, sparing animals suffering and pain, as well as fear and distress. It does not, however, exempt *shehitah* from the requirement of pre-stunning in the same way as the directive, but, instead, (Article 17) allows "Each Contracting Party" (i.e., each country which decides to join and be bound by the Convention) to "authorise derogations (i.e., exceptions) from the provisions concerning prior stunning" in the case of "slaughtering in accordance with religious rituals."

In an attached "Explanatory Report," which clarifies the thinking of the "Committee of Experts on the Protection of Animals" who drafted this Convention, the Committee states that they were of the opinion "that, as a general rule, animals should not be slaughtered unless they have previously been stunned." They then add, however, that they "thought it necessary to make an exception in the case of ritual slaughter, in order to respect the principle that everyone is free to manifest his religion, among other things by observing its rites." *Shehitah*, in other words, is permitted by way of exception (if member states make special provision to permit it), in order to maintain the principle of religious freedom. (It should be noted, by the way, that this clarification of Article 17 explicitly implies that the right, under Article 9 (1) of the European Convention on Human Rights, to "manifest" one's religion "in worship, teaching, practice and observance" does include the right to practice *shehitah*, contrary to the interpretation of "manifest" by the Dutch Supreme Court.)

Two other points in the 1979 Convention are also worthy of mention. Article 13 provides that in "the case of the ritual slaughter of animals of the bovine species, they shall be restrained before slaughter by mechanical means designed to spare them all avoidable pain, suffering, agitation, injury or contusions." This does not in so many words spell out a particular type of permitted (or forbidden) restraint or pen. Article 14, however, does prohibit suspending animals after *shehitah* "before the end of bleeding." Secondly, Article 19 provides that each party to the Convention shall ensure, if it does not itself issue the necessary authorisation for *shehitah*, that "animal sacrificers" (!) are duly authorised by "the religious bodies concerned." It is not clear why there is this sudden and surprising reference to *shohtim* as "animal sacrificers."

Of the twelve E.E.C. countries, it appears that at the moment only Belgium, France, and the United Kingdom are parties to the Convention. (Germany, Italy and Holland, who originally were parties, subsequently withdrew, and the other six countries were not parties to it

at any stage.) However, it should also be noted that by an E.E.C. Council decision (88/306/EEC) of May 16th 1988, the E.E.C. Council "approved" the European Convention on behalf of the European Economic Community. This "approval" does not have any legally-binding effect as such, but it indicates the intention of the E.E.C. to bind its member states, in due course, to the provisions of the Convention.

The latest E.E.C. proposals are contained in a "Draft Proposal for a Council Regulation (EEC) on the protection of animals at the time of slaughter or killing," which was issued recently as a working document by the Directorate General for Agriculture of the European Commission. There are numerous detailed aspects of the proposed rules which could possibly affect the practice of *shehitah*. For example, the proposal to set up and develop a system to ensure that the Commission has access to all current scientific information on the stunning and slaughter of animals seems entirely innocuous. But it could possibly be used to bring further pressure to bear upon *shehitah*. More significantly, however, there are a number of detailed proposals which have an immediate and direct impact on *shehitah* as we know it. These proposals are, in essence, as follows:

(a) All animals and poultry have to be stunned in accordance with specified procedures, but Member States "may authorise derogations" from this requirement to permit "slaughter in accordance with religious rituals."

(b) Where slaughter is authorised "in accordance with religious rituals," it must be carried out "at least" in accordance with certain detailed provisions in an "Annex" to the draft Regulation.

(c) These provisions state that the *shehitah* incision "shall be carried out without delay after restraint, using a knife which is large enough for the size of the animal and with a cutting edge that is sharp and undamaged." The animal "shall not be moved" after *shehitah* for at least 30 seconds, "and in any case until all brain-stem reflexes have ceased." The "competent authority" of each State (defined as "the central authority of a Member State competent to carry out veterinary checks") has to "ensure" that any person performing ritual slaughter . . . has the knowledge and skill necessary to perform the task efficiently," and, finally, it has to ensure "that all meat produced by such slaughter is identified to the final consumer as having been produced by ritual slaughter."

(d) No means of restraint shall be used which causes "pain, suffering, or unnecessary distress or excitement," and, in particular, "animals . . . shall not be suspended, inverted or tilted from the perpendicular plane before . . . killing." This rule (together with all other provisions of the Regulation) is to apply from 1st January 1992, with the exception that Member States may (until 1st January 1995) allow the continued use of a pen which inverts or tilts the animal, if that pen

was already being used in a slaughterhouse which is in operation on 1st January 1992.

The draft Regulation contains a number of major and potentially serious implications for *shehitah*. In the first place, it is a further step in the continuous trend towards ever-increasing pressure on *shehitah*. At the moment all we have is the 1974 stunning Directive, which expressly states that it does not affect *shehitah*. The position is totally different under the proposed Regulation. The reference, moreover, in the introductory comments to “recent scientific research,” and “considerable research and development . . . of different slaughter methods,” is ominous. (Most of the recent research has attempted to highlight the alleged “deficiencies” of *shehitah*.) Furthermore, the proposed Regulation, which ostensibly only seeks to “permit the eventual signature by the Community of the European Convention,” goes *further* than the Convention in a number of significant respects (for example, in its total ban on inversion or tilting of animals). It should be noted, moreover, that the Convention is a *voluntary* agreement, which is not directly binding, in national law, even for the States which have accepted it (it takes effect only under the rules of international law), and it allows, moreover, for States who have acceded to it to leave it subsequently (as has, in fact, happened). The position is quite different under the proposed Regulation, which (a) is legally-binding on all Member States, (b) takes automatic effect in national law, and (c) does not allow for secession. Indeed, the mere change from the present E.E.C. provisions, contained in the 1974 *Directive*, to the proposed *Regulation*, is in itself an indication of the increasing pressure on *shehitah*, in view of the more directly-binding legal nature of a Regulation as compared with a Directive. And, provisions affecting *shehitah* in one country have a “ripple” impact on other countries, so that any pressure on *shehitah* in one country generates its own momentum of pressure in other countries, which in turn puts further pressure in an ever-increasing spiral. This danger is magnified considerably in relation to the E.E.C., in the first place, because the E.E.C. covers almost all European countries with a significant Jewish community (excepting Austria and Switzerland) and, in the second place, because the weight attached to a “pan-European” Regulation, and common policy, is considerably more than that which attaches to the legislation of a single nation state.

The Regulation, moreover, does not *oblige* E.E.C. countries to pass legislation permitting *shehitah*; it merely *allows* Member States to do so. This creates a presumption (reinforced by the failure of the Regulation to define *shehitah* as a humane method of slaughter, and by the continued use of the phrase “ritual slaughter”) that stunning is the norm, the preferred method, and that *shehitah* is a second-rate method to be permitted only by way of special exemption and legislation (“derogations” from the “requirement” of pre-stunning). It should be noted,

in this context, that the European Court of Justice has ruled that where a Member-State is free, under Community law, to decide whether or not to take advantage of a permitted derogation of Community law, it is entitled, if it so wishes, to subject the enjoyment of the derogation to further conditions, in addition to those permitted by Community law. In other words, a State which passes legislation to “permit” *shehitah* can, if it wishes, be strict on the provisions of the Regulations, but cannot be lenient. As if to put the matter absolutely beyond doubt, the Regulation (as noted above) also expressly states that where religious slaughter is permitted, it shall be carried out “*at least*” (my emphasis) in accordance with the detailed provisions attached to the proposed Regulation.

Finally it should be noted, in this context, that the Regulation makes provision for alteration to the proposed rules of the Commission of the E.E.C. in conjunction with a special “Standing Veterinary Committee.” Significantly, no provision is made for consultation with religious leaders in the Jewish community, and it seems that their views have not been solicited in formulating the present proposals.

We turn now to a consideration of some of the specific implications of the proposed Regulation, apart from the stunning requirement. The first change which would result relates to the method of “restraint” used before *shehitah*. All inversion of animals (as in the present “Weinberg pen” used in England) is absolutely prohibited (with a temporary “phasing-out” exception until 1995). It is not clear how, under this proposal, one would be able to carry out *shehitah* on sheep, which are not held in pens, but turned on their backs. What is clear is that *shehitah* on cattle would have to be carried out in a standing pen, in which the animal remains upright. The ban on “tilting” the animal means that use of a hydraulically-operated inclining pen, which is widely used, e.g., in France, for kosher *shehitah*, which causes the animal no discomfort, is also absolutely prohibited.

The issue of the standing pen is one which has occasioned considerable halakhic and practical debate. It seems reasonably clear that *shehitah* was always carried out on animals which were lying on their backs. Indeed, the Torah’s very first reference to *shehitah* is found in the context of the *akedah* (the “binding of Isaac” story in the Bible), where we are told that Abraham took the knife “*lish’hot et beno*” (to slaughter his son). There is no doubt that Isaac was positioned on his back, since we are told (see *Midrash Rabbah* and *Targum Yonatan* [Genesis 27:1]) that his subsequent blindness was a result of the tears which the angels shed, falling into Isaac’s eyes while he was on the altar. In this context it should be noted that the description of what was about to occur as “slaughter” is not merely a literary matter — we derive certain laws of *shehitah* directly from this description. Moreover, *shehitah me’u-medes* (animal slaughter while the animal is standing), as it is called,

can cause problems in the *shehitah*, and requires skilled training on the part of *shohtim*, as well as careful construction and engineering of a suitable pen. It is true that in America the use of the standing pen has been generally accepted, but this is subject to rabbinical approval of a particular design of such a pen. No such approval is specified in the E.E.C. draft Regulation, which could lead to a situation where an unacceptable pen is introduced, particularly as the Regulation also prohibits “suspending” the animal, which would apparently prohibit lifting it up by means of a belly-plate. Moreover, it should be noted that in America a price was exacted by the Jewish community for agreeing to the introduction of the standing pen: namely, that *shehitah* be expressly defined as one of the accepted humane methods of slaughter. This is now enshrined in U.S. Federal legislation, and has enabled the Jewish community to ward off subsequent attacks on *shehitah* (see, e.g., the American Supreme Court decision in *Jones v. Butz*, Supreme Court Reporter 22 [1974], affirming that the definition of *shehitah* as “humane” was based on “uncontradicted scientific evidence”). There is no similar *quid pro quo* in the proposed E.E.C. Regulation.

Secondly, the draft Regulation provides that the animal shall not be moved after *shehitah* for “at least” 30 seconds, and “in any case until all brain-stem reflexes have ceased.” This provision, in itself, is capable of being construed as a criticism of *shehitah*, inasmuch as it implies that the animal could feel pain after *shehitah* for at least 30 seconds. The fact that Professor Dukes, in his detailed and famous “Study of Blood Pressure and Blood Flow in the Vertebral Arteries of Ruminants” (Cornell University, 1960), found that the animal becomes unconscious in a matter of seconds, is, of course, overlooked. So is Professor Schulze’s 1978 study indicating that unconsciousness sets in, on average, *earlier* after *shehitah* than after conventional bolt-stunning. From a practical point of view, moreover, this provision is a serious one, since it would very well have the effect of dramatically impeding the throughput of *shehitah*. If the rule is meant to apply to poultry as well (which is not clear from the wording) the wait of at least 30 seconds after *shehitah* of each bird would cause havoc in production. Moreover, the 30 seconds is only a *minimum*; the Regulation requires waiting “until all brain-stem reflexes have ceased.” It is not at all clear what this term refers to (the lack of spontaneous electrical activity in the brain, as measured by an EEG? Or perhaps brain death, as measured by failure to respond to external stimuli?) We are into a limbo-land of indeterminate timing, in which *shehitah* could be made almost impossible by the need to wait a long and unspecified period before any further processing. This is quite apart from the fact that “brain-stem reflexes” are a nonsensical method of determining consciousness in an animal.

A further unsatisfactory provision in the draft Regulation is the requirement that the national veterinary authorities shall “ensure” the

knowledge and skill of “any person performing ritual slaughter.” Whilst this may well be directed at the Muslim community (which operates virtually no control over who may practice *dhabh*, or how), it has no relevance in the context of *shehitah*. Our *shohtim*, trained as they are to standards of skill usually found only in surgeons, hardly require the additional *hekhsher* of a national authority. The implication, in itself, seems to be that *shehitah* could be “inefficient.” Moreover, it is difficult for a *shohet* to operate (as is required) in conditions of absolute calm and without pressure, if he is at any time subject to an “inspection” by a veterinary authority. In addition, the mere fact that the national authority has this over-all power of control opens the possibility that an unfriendly veterinary authority, or even an unfriendly Agricultural Minister, might use this power arbitrarily to prevent the proper licensing of *shohtim* or their performance of *shehitah*.

The final main provision of the draft Regulation is probably the most disturbing one. This relates to the requirement of “identification” to the consumer. What it means, in short, is that all kosher meat will have to bear a label stating that it has been “produced” by “ritual slaughter.” Quite clearly, this provision falls outside the scope of the Regulation, which is supposed to deal with the method of performing “ritual slaughter,” and not with the marketing of the meat thereafter.

It will be recalled that a similar provision was called for in England by the Farm Animal Welfare Council, and that this has been one of the main planks of anti-*shehitah* agitation in recent years. The argument is based, once again, on the implied presumption that *shehitah* is a necessary evil, which has to be tolerated for the Jewish community itself. The non-Jewish consumer, by contrast, has to be legally and practically protected from the terrible risk that he or she might inadvertently buy and eat a piece of “ritually-slaughtered” meat which, for a variety of reasons (e.g., unporged hindquarters, and meat deemed not kosher despite proper slaughter), comes to the non-kosher market place.

The absurdity of this contention is apparent at a moment’s reflection. In England, for example, the *total* output of *shehitah*, in relation to the meat output of the country as a whole, is less than 1%. Let us assume, for argument’s sake (although the statistics are dubious) that the allegation that three-quarters of the meat produced by *shehitah* ends up in the general market is correct. This would still mean that the “risk” of inadvertently buying such meat is no more than half a percent, at the maximum. Do “conscientious objectors” really need legislation to protect them from such a risk? Moreover, why are they not similarly protected from other, more serious risks — the risk, for example, of eating meat from an animal killed by captive bolt stunning, which (with all the precautions taken) carries at least a 6.6% risk of failure (according to the latest, as yet unpublished, scientific study by Dr. Daly of Bristol)? Or the risk of eating pigs which have been improperly stunned (since,

according to Dr. Neville Gregory, there is no scientific evidence showing that "electrical stunning" actually stuns!); or the risk (highlighted in "Slaughterhouse Tales," *The Independent*, March 13th, 1989, and in the *New Scientist*, May 19th, 1990) that one is eating poultry which has missed the electrical water-bath which is supposed to stun it, so that it was slashed by a mechanical knife, and scalded, whilst still fully conscious?

The requirement that meat produced by *shehitah* should be labelled, whilst other meat requires no such labelling, is morally repugnant as discriminatory legislation. It is certain, in practice, to increase anti-Semitism if applied, even if its intention is not overtly anti-Semitic. (It has been suggested, incidentally, that the purpose of this kind of requirement is to identify the meat to the potential *Jewish* consumer, so as to encourage him or her to buy kosher meat! The absurdity of this suggestion is such that it requires no refutation.) Moreover, it is clear that the effect of such a requirement would be to bring enormous economic pressures to bear against *shehitah*, by preventing kosher meat from being sold freely on the general market. This could price kosher meat out of the market, thereby effectively stopping *shehitah*, whilst maintaining the theoretical legal right to practice it!

One other point which is not clear in the proposed Regulation is the actual method of "incision" permitted in relation to *shehitah*. Although not defined, the draft Regulation refers to the method of "bleeding of animals," which it defines by reference to incision of "both carotid arteries and both jugular veins." This leaves open the possibility that all animals undergoing *shehitah* would have to have both carotid arteries and both jugular veins totally severed (not necessarily required by the *halakhah* for proper *shehitah*), and could also give rise to a situation involving a pause at the end of the act of severing the trachea and oesophagus, which creates a serious halakhic problem.

We have already noted previously that the E.E.C. Regulation expressly states that religious slaughter must be carried out "at least" in accordance with its provisions. Quite clearly, where the regulations of a particular country are stricter than the E.E.C. Regulations, the former will prevail in that country. However where the E.E.C. Regulations are stricter, they will take precedence, since E.E.C. law automatically overrules national legislation.

How to Counter the Proposed E.E.C. Regulation

From a strictly legal point of view, an act of the E.E.C. cannot be challenged on the grounds that it conflicts with one of the specific rights guaranteed in the European Convention on Human Rights. One could not, in other words, allege that restrictions on *shehitah* imposed by the draft Regulation are illegal, or void, on the grounds that they are in breach of Article 9 of the Convention (which guarantees the

right to manifest one's religion). The E.E.C. however, has stated on a number of occasions that it considers the protection of human rights a matter of prime importance. Moreover, the Court of Justice, in a number of decisions, has managed to "introduce" a general legal obligation upon the E.E.C. to show respect for human rights, on the grounds that this constitutes part of "the general principles of law" which the Community is obliged to uphold. Finally, it should be noted that, although the E.E.C. as such is not a party to the Convention, each of the individual Member States of the E.E.C. is also a party, individually, to the Convention. Consequently, it would seem almost inconceivable for the E.E.C. to legislate in such a manner as to cause its individual member-states to be in breach of their obligations under the Convention. It appears, therefore, that a challenge can (and should) be mounted against the proposed Regulation, or any similar E.E.C. Regulation, on the grounds that it infringes against the enjoyment of human rights and freedoms. People, after all, also have rights, and not only animals.

Reform Judaism and Kashrut

PETER S. KNOBEL

THE HISTORY OF REFORM JUDAISM'S ATTITUDE toward *kashrut* should be viewed within the context of its attitude toward Jewish religious practice in general. While *kashrut* is a central institution of Jewish life, from the beginning of the Reform movement there is a paucity of writing concerning it. W. Gunther Plaut suggests two reasons: 1) early Reform considered the observance of dietary laws largely as a private matter, whereas its greatest concerns were public observances such as worship; 2) many of those attracted to Reform had already begun to abandon the dietary laws in whole or in part.¹ An early Reformer, Michael Creizenach (1789-1842), argued for a relaxation of the restrictions on the slaughter and preparation of meat by non-Jews, while maintaining the strictures on the separation of meat and milk and prohibitions against pork and shellfish.² Bernard Felsenthal (1822-1908), in defending the dietary laws, suggested that they have hygienic benefit and a deeper ethical significance. "They teach us the lovely virtue of self-discipline and may thereby assist us to become a holy people . . .", but he does suggest that groundless laws need not be observed.³ Both Creizenach in Germany and Felsenthal in Chicago tried to strike a middle ground, opting for modification rather than abandonment. It should be noted that some synagogues and individuals observed what they called *Biblical kashrut*, avoiding pork and shellfish.⁴ However, the dominant Reform position was expressed in the Pittsburgh Platform of 1885.

We hold that all such Mosaic and rabbinical law as regulate diet, priestly purity and dress, originated in ages and under the influence of ideas altogether foreign to our present mental and spiritual state. They fail to impress the modern Jew with a spirit of priestly holiness; their observance in our days is apt rather to obstruct than to further modern spiritual elevation.⁵

1. W. Gunther Plaut, *The Rise of Reform Judaism: Sourcebook of its European Origins* (New York: World Union for Progressive Judaism, 1963), p. 212.

2. Ibid.

3. W. Gunther Plaut, *The Growth of the Reform Movement: American and European Sources to 1948* (New York, 1965), pp. 265-66.

4. This was in keeping with a tendency to deny the authority of the Talmud and the later rabbinic codes, while at the same time maintaining the authority of the Bible.

5. Michael Meyer, *Response to Modernity: A History of the Reform Movement in Judaism* (New York: Oxford University Press, 1988), p. 388.

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The Pittsburgh Platform captured the spirit of the day, in which Judaism was described as ethical monotheism. Particularistic practices which separated the Jew from the non-Jew were not in keeping with the universalistic tone of classical Reform. The American rabbis who led Reform Judaism, from the middle of the nineteenth century until just before World War II, were imbued with an optimism which suggested that the world was on the verge of a new era. The United States, for them, was a new kind of country, and some went so far as to describe America as our Zion. Reason and education, they believed, would lead to universal acceptance of the Jew as an equal member of society. They were living at the dawn of the messianic era. Therefore, their decision to abandon certain practices, such as *kashrut*, which separate the Jew and the non-Jew, was motivated not by a desire to assimilate in the negative way that this term is often used. Rather, it was a principled stand based on a utopian messianism which had captured their theological imagination. They did not desire to escape from Judaism but to fulfill it.

The easy optimism of much of the 19th century was destroyed by World War I and, between the two wars, under Reform, Judaism experienced profound changes.⁶ In 1937, Felix Levy, in his presidential message to the Central Conference of American Rabbis (CCAR), suggested a code for Reform Jewish practice designed to "re-enthron the Halakhah as central to Jewish life."⁷ While this call for a set of rules was opposed by the majority of his colleagues, one can observe among Reform leadership a renewed interest in Jewish observance and halakhah. This attitude is clear in the Columbus Platform's "Guiding Principles of Reform Judaism" of 1938.

Judaism as a way of life requires, in addition to its moral and spiritual demands, the preservation of the Sabbath, festivals and Holy Days, the retention and development of such customs, symbols and ceremonies as possess inspirational values ...⁸

Gone is the negative language of the Pittsburgh Platform. The new Guiding Principles called for a re-exploration of past practice and a creation of new practices. In 1938, the Union of American Hebrew Congregations' (UAHC) Committee on Synagogue and Community recommended a "Code for Jewish Ceremonial Observance."⁹ In 1942, Rabbi William Braude delivered a paper to the CCAR calling for increased Jewish observance, including some form of *kashrut*, but it was only after World War II that the reintroduction of many lapsed practices would get serious consideration.¹⁰ The new spirit is found in Solomon B. Free-

6. M. Meyer, *Op. cit.*, pp. 296-334.

7. *Ibid.*, p. 324.

8. *Ibid.*, p. 391.

9. *Ibid.*, p. 376.

10. *Ibid.*, p. 325.

hof's 1944 book, *Reform Jewish Practice and Its Rabbinic Background*, in which he wrote that

the foundation of Jewish religious life is Jewish practice upon which are built habits of the mind and attitudes toward the universe . . . First we obey God's Commandments and then we learn to understand God's nature. We do not begin with theology, we arrive at theology.¹¹

However, it was not until 1957 that *A Guide for Reform Jews*, by Rabbis Frederic A. Doppelt and David Polish, introduced the language of obligation and *mizvah*. The book was published privately because the authors concluded that the CCAR was not yet ready for such a guide. Their statement on the dietary laws is brief and only descriptive.

Although Reform Judaism does not adhere to the traditional dietary laws, many Reform Jews abstain from eating the meat of the pig. This is based on historical associations, since the pig was often used as an instrument of persecution of our people who were tormented by their enemies into eating it.¹²

A survey in the mid-fifties showed that about a quarter of Reform Jews kept some form of *kashrut*, even if it amounted only to avoiding pork in their homes.¹³ A 1987 survey of Reform leaders showed that while only 9% said they kept the dietary laws, 36% said they avoided eating pork or pork products.¹⁴

In 1972, with the publication of *Tadrikkh le Shabbat — A Shabbat Manual*, the CCAR undertook to provide concrete guidance on Jewish religious practice to Reform Jews.¹⁵ It uses the language of *mizvah*, and includes prohibitions against work on Shabbat. While its tone is cautious, it is a watershed publication, and is the official successor to what Rabbis Doppelt and Polish had published privately.

In 1975, to celebrate the one hundredth anniversary of the founding of the UAHC and the Hebrew Union College–Jewish Institute of Religion (HUC-JIR), the CCAR Conference prepared a new platform for Reform Judaism entitled the “Centenary Perspective.” This document goes much farther than the Columbus Platform, with its emphasis on the importance of personal observance and with its call for individual Reform Jews to confront the claims of tradition to make informed

11. As cited in M. Meyer, p. 324.

12. Frederic Doppelt and David Polish, *A Guide for Reform Jews* (New York, 1957), p. 93.

13. M. Meyer, *Op. cit.*, p. 375.

14. M. Winer, S. Seltzer, S. Schwager, *Leaders of Reform Judaism* (New York: Union of American Hebrew Congregations, 1987), p. 49.

15. *The Shabbat Manual*, edited by W. Gunther Plaut, was a product of the an *ad hoc* CCAR Committee on Shabbat. This committee evolved into a standing committee on Reform Practices, which has produced *Gates of Mitzvah: A Guide to the Jewish Life Cycle*, edited by Simeon Maslin, and *Gates of the Seasons: A Guide to the Jewish Year*, edited by Peter Knobel. It is important to note that the guides use Torah, Mishnah, Talmud, Maimonides, and even the *Shulhan Arukh* as sources for the *mizvot*.

choice. The "Centenary Perspective" is a virtual invitation to create guides.

Judaism emphasizes action rather than creed as the primary expression of a religious life, the means by which we strive to achieve universal justice and peace. Reform Judaism shares this emphasis on duty and obligation. Our founders stressed that the Jews' ethical responsibilities, personal and social, are enjoined by God. The past century has taught us that the claims upon us may begin with our ethical obligations but they extend to many other aspects of Jewish living, including: creating a Jewish home centered on family devotion; life long study; private prayer and public worship; daily religious observance; keeping the Sabbath and the holy days; celebrating the major events of life; involvement with the synagogue and community; and other activities which promote the survival of the Jewish people and enhance its existence. Within each area of Jewish observance Reform Jews are called upon to confront the claims of Jewish tradition, however differently perceived, and to exercise their individual autonomy, choosing and creating on the basis of commitment and knowledge.¹⁶

Building on the precedent of *A Shabbat Manual*, the CCAR responded in 1979 with *Gates of Mitzvah: A Guide to the Jewish Life Cycle*, edited by Simeon Maslin. While it does not designate *kashrut* as a *mitzvah*, it contains an extensive discussion of the dietary laws, and offers numerous rationales for their observance.

Many Reform Jews observe certain traditional dietary disciplines as part of their attempt to establish a Jewish home and lifestyle. For some, traditional *kashrut* enhances the sanctity of the home and should be observed as a *mitzvah*; for some, a degree of *kashrut*, e.g., the avoidance of pork and/or shellfish, may be meaningful; still others may find nothing of value in *kashrut*. However, the fact that *kashrut* was an essential feature of Jewish life for so many centuries should motivate the Jewish family to study it and consider whether or not it may enhance the sanctity of their home.¹⁷

This is a far cry from the Pittsburgh Platform where the dietary laws are described as being a possible impediment to modern concepts of "spiritual elevation." *Kashrut* is now conceived as offering the possibility of sanctification. The brief essay at the end of *Gates of Mitzvah* details some of the options which are available to the Reform Jew. It is, in fact, an attempt to broaden the definition of *kashrut* to include all dietary disciplines undertaken for Jewish religious reasons as part of *kashrut*. Not only is the Reform approach not all or nothing with respect to the tradition, but it also provides new definitions for traditional categories. With respect to *kashrut*, *Gates of Mitzvah* suggests that one might wish to give up forbidden foods and, in addition, refrain from mixing milk and meat. This discipline could be followed all of the time or only when one is eating at home. Vegetarianism is also listed as a possibility, giving it an ethical cast by avoiding the unnecessary taking of a life:

16. M. Meyer, *Op. cit.*, p. 393.

17. Simeon Maslin, ed., *Gates of Mitzvah* (New York: CCAR, 1979), p. 40.

In the Torah (Leviticus 11:44 and Deuteronomy 14:21) the Jewish people is commanded to observe the dietary laws as a means of making it *kadosh* — holy. Holiness has the dual sense of inner hallowing and outer separateness. The idea of sanctifying and imposing discipline on the most basic and unavoidable act of human behavior is one of the reasons that may lead a person to adopt some form of *kashrut*. Among the other reasons one may find compelling are: (1) identification and solidarity with the worldwide Jewish community, (2) the ethical discipline of avoiding certain foods or limiting one's appetite because of the growing scarcity of food in parts of the world, (3) avoidance of certain foods that are traditionally obnoxious to Jews, e.g., pork, which may provide a sense of identification with past generations and their struggle to remain Jews, (4) the authority of ancient biblical and rabbinic injunctions, and (5) the desire to have a home in which any Jew might feel free to eat.¹⁸

Even more remarkable than this guide written by rabbis is the statement by the joint UAHC/CCAR Taskforce on Religious Commitment, in which *kashrut* is explicitly mentioned as a *mizvah* that can deepen a Reform Jew's spiritual life:

The performance of mitzvot is central to the life of the Jew. Their content is personal and communal, ethical and ritual. Performance of mitzvot deepens our spirituality and draws us closer to God. Reform Judaism is predicated on the recognition of our freedom of religious decision-making within the framework of our tradition. Such freedom, however does not license the abandonment of mitzvot altogether, nor allow that they be ignored. We are each obliged, through informed and responsible choice, to adopt mitzvot which we will make part of our lives. The whole of our tradition provides us with options for religious living. Such elements of our tradition as *talit*, *kippah* and *kashrut*, can deepen and confirm the faith of Reform Jews who perform them.¹⁹

While it is clear that important elements in the both the lay and rabbinic leadership are willing to reconsider the movement's stand on *kashrut*, it is equally certain that decisions in the area of personal observance remain a matter of individual choice. There is anecdotal evidence that recently a number, albeit not many, of Reform Jews have adopted some form of *kashrut*. Reform Jews now routinely support the decision to observe the dietary laws at major community-wide functions and, increasingly, at Reform communal affairs there is often a fish or kosher option.²⁰

There has been a revolution in the attitude of Reform Judaism towards religious observance, and the extreme emphasis on universalism has been balanced by a reassertion of particularism. The reintroduction of the word *mizvah* and the language of obligation to describe life cycle

18. Ibid., p. 132.

19. D. Schechter, H. Gordon, L. Sachnowitz, "A Call to Commitment," *Reform Judaism*, Fall 1988: 7.

20. Camps run by the UAHC do not serve pork or shellfish. Gerard Kaye, Director of the Olin-Sang Ruby Union Institute in Oconomowoc, Wisconsin, notes that he has seen an increase in the number of rabbinic faculty who request kosher food.

and holy day observance, the rooting of the rationale for these *mizvot* in traditional texts, as well as the creation of new *mizvot* by CCAR resolution, constitute a significant trend. The tension between individual autonomy and authority remains unresolved, although there have been a number of recent attempts.²¹ There is clearly an openness to greater observance, but it is difficult to determine how many Reform Jews will actually change their lifestyles and observe more *mizvot*. The current situation is both an opportunity and a challenge.

21. Eugene Borowitz, "The Autonomous Self and the Commanding Community," *Theological Studies*, Vol. 45 (1984): 34-56; Peter Knobel, "Personal Autonomy and the Sense of Mitzvah," *Central Conference of American Rabbis Yearbook*, Vol. 96 (1986), pp. 40-46; Clifford Librach, *Judaism Beyond Autonomy: A Philosophy of Halakha for Liberal Jews* (unpublished rabbinic thesis) (Cincinnati: Hebrew Union College-Jewish Institute of Religion, 1986).

The Origins of Muslim Attitudes Towards the Jews and Judaism

JACOB LASSNER

*"Khaybar! Khaybar! ya Yahud!
Jaysh Muhammad sawfa ya'ud."*

*Khaybar! Khaybar! O Jews!
Muhammad's army will surely return.*

— "Chant of the Intifadah"

SOME THIRTY YEARS AGO, JOHN FOSTER Dulles, the prickly statesman of President Eisenhower's otherwise bland administration, was asked about the source of enmity between Israel and the Arabs. Not one to give credence to overly complex historical explanations, he responded simply and directly. "The Jews," he said, "killed Muhammad." Or in any case, so he was led to believe. The caustic remark, which made a minor splash in the press, caused a few ripples of nervous laughter, particularly in the Jewish community. Not surprisingly, there were those who attributed the alleged gaffe to a residual myth learned and accepted as eternal truth long before this statesman and lay leader of his church knew anything of Muhammad's conflict with the Jews. But the matter of Dulles' testimony is not so neatly put to rest. There are, indeed, accounts of Muslim origin that Muhammad was murdered by the Jews, more particularly, that he was poisoned by one Zaynab bint al-Harith.

A Medinese woman living at the Jewish oasis of Khaybar,¹ Zaynab, offered the Prophet his favorite meal as he prepared to celebrate a recent and hard-fought victory over the local inhabitants. At first glance, this might seem an unusually gracious act on the part of the vanquished. Muhammad not only inflicted a bitter defeat on his current hosts; in an earlier stage of his conflict with the Jewish tribes of Arabia, he had been responsible for the extermination of her kinsmen, the Banu Qurayzah of Medina.² Given this background of hostility between Mu-

1. See *Encyclopedia of Islam*, 2nd edition (*EI*²) s.v. *Khaybar*.

2. The extended story of Muhammad's conflict with the Jews of Medina is detailed in all of the standard biographies. The best and most detailed treatment of the subject remains the Dutch study of A.J. Wensinck. This was translated by W. Behn into English as *Muhammad and the Jews of Medina* (Freiburg, 1975). The subject is badly in need of a systematic review.

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hammad and the Jews, Zaynab's seeming act of graciousness should have been viewed with at least a modicum of suspicion. Indeed, it took only a single bite of her cooking to indicate that something was wrong, and the Prophet wisely attempted no more. But the poison, so carefully prepared, had already taken hold of its victim. And so, while the rest of the Muslims ate boiled donkey meat and horseflesh in celebration of their victory over the Jews, the Prophet sealed his fate by craving kosher shoulder of lamb. According to Muhammad's medieval biographers, this was a meal from which the Prophet never quite recovered.³

After some reflection, the absorbing tale of Zaynab and the Prophet at Khaybar may seem more richly seasoned with irony than substance, poisonous or otherwise. There is a disquieting footnote to the account of Zaynab's revenge — a glaring flaw, so to speak, that may cause some skeptics to doubt the very historicity of the episode. The fact of the matter is, the Prophet succumbed only some four years later! Various explanations might be offered to give credence to this seeming incongruity, but lest one believe Zaynab capable of concocting a potion that worked in so subtle a fashion, the only other Muslim to sample her cooking, Bishr ibn al-Bara², keeled over after finishing his morsel and expired shortly thereafter. The reported details of her action may very well give rise to some doubt; perhaps they were suspected by more cautious Muslim readers. Considering the consequences of her behavior, Zaynab's alleged attempt on the Prophet's life receives little currency in Muslim sources. In any event, it never became a central issue in the polemics against the Jews, as did the killing of Jesus for Christians. It is then all the more interesting, if not surprising, that John Foster Dulles might have come across this tradition.

Whatever the response Muslims may have had to this account of Zaynab and the Prophet, there is no question that the behavior of the Jewess would have been judged entirely consistent with her situation. However reprehensible, any attempt by her to poison Muhammad would have been recognized as shaped by powerful drives that were well understood in the Near East, and which were likely to have struck a sympathetic chord among contemporary audiences. After all, the simultaneous killing of one's immediate family and kinsmen was no small matter among tribesmen whose ethos called for redeeming the honor of family and clan. The Prophet himself apparently recognized the hatred and lust for revenge that had driven Zaynab, for he graciously forgave her when she informed him that temporal rulers succumb to plots such as hers; a real prophet would know when he is about to be poisoned and would surely take the necessary steps to protect himself. She was, so it would seem, merely testing his claim. While he apparently passed with flying colors, that is, he spat out the first bite without swal-

3. Ibn Hishām, *Sīrah* (ed. T. Saʿd. Beirut), iii: 218.

lowing, the very taste of her cooking laced with poison eventually did him in.⁴

Whether or not one believes the details of l'affaire Zaynab in its different versions, the story needs to be seen within the larger context of Muhammad's relations with the Jews. Recalcitrant tribesmen who opposed him and reportedly supported his enemies, the Jews received what they justly deserved after crossing his path. Subordination, expulsion, even extermination, the unusual and extreme punishment meted out to Zaynab's kin, the Banu Qurayzah, was the correct price for what was perceived as bad faith and political treachery. The cumulative effect of this policy towards the Jews took its toll over time. Following the long Muslim siege and decisive victory at Khaybar, the Jews as a group ceased to be a factor in the larger politics of Arabia. Similarly, the venerable Jewish communities along the subsequent path of Muslim conquest played no significant role nor did they exert any marked influence in an expanded Islamic state. To the contrary, together with other non-Muslim monotheists, they were saddled with demeaning and discriminatory legislation covering dress, assembly, taxes, the building of new houses of worship, and any ill-defined behavior that might be construed as insulting to Muslim sensibilities.⁵

There was, however, a reverse side to this coin. The edicts, vestiges of Byzantine and Sasanian legislation, were rarely invoked, and when invoked they were indifferently applied by the Muslim authorities. Moreover, the Jews were given formal status as a protected minority, insuring thereby basic religious freedom, protection against physical harm, property rights, and internal control over their own affairs. Taking stock of reality, the Jewish communities carefully pursued a low profile, preferring stability to political activism. One should not be quick to judge this preference harshly. Given a long history of failed rebellions and difficult experiences under so many previous regimes, experiences indelibly etched in the lachrymose historical consciousness of all Jews, stability was not a condition to be taken for granted, nor was it valued lightly. Clearly, Zaynab's audacious behavior towards the Prophet, as reported in Muslim sources, was in no way a harbinger of future Jewish actions in the lands of Islam. This generally holds true whether one speaks of the Jews of the Land of Israel, Egypt, Babylonia, or wherever Muslims declared their sovereignty, that juridical entity known as the Abode of Islam. As the Jews always played the game with their Muslim patrons according to clearly defined and acceptable rules, there were no conceivable circumstances in which individual Jewish settlements or

4. Ibid.

5. See S.D. Goitein, *Jews and Arabs* (New York, 1955), pp. 62-89; B. Lewis, *The Jews of Islam* (Princeton, 1984), esp. pp. 3-66; A.S. Tritton, *The Caliphs and Their Non-Muslim Subjects* (London, 1930); A. Fatal, *Le Statut légal des non-musulmans en pays d'Islam* (Beirut, 1958).

the Jewish community in unison could have been considered an extraordinary threat, or, indeed, any threat at all, to the hegemonic culture and its political foundations.

How, then, does one explain the persistent expression of sharp anti-Jewish sentiments among Muslims in the Near East? I should add that these sentiments continue to be expressed, as a visit to any Arabic book stall will reveal. If the attitudes reflected in numerous traditions, such as the tendentious story of Zaynab, were rooted entirely in struggles for political power such as the conflict between Muhammad and the Jewish tribes of Arabia, they should have disappeared shortly after the Jewish community settled into a state of unrelieved impotence. In any case, one would expect these hostile traditions to have lost much, if not most, of their emotive force. What was so threatening about this meek minority that it occasioned such sustained and sharp criticism — indeed, a more sustained and sharper criticism than that which was reserved for the more powerful Christian communities of the region? For some eight hundred years, the Christian Byzantine Empire shared a common and, as often as not, hostile border with the Islamic realm, and the Crusader Kingdoms were carved out of the Abode of Islam itself before succumbing to military pressures. What, then, explains the seemingly exaggerated response to the defenseless Jews from what was, to all appearances, a proud and self-confident society of believing Muslims?

One might, of course, argue that equally impotent Jewish communities were more harshly dealt with in word and deed in the Christian West. But consider the differences. By legal right, the Jews of Islam were, for all times, a distinct and protected community that was entitled to share a homeland, *watan*, with their Muslim neighbors. Moreover, Jews and Muslims also shared many aspects of a common culture. The similarities of faith, practice, and religious interpretation, between Judaism and Islam were much greater than the similarities between Judaism and Christianity or Islam and Christianity. Nor did concern for the recalcitrant Jew present as central and vexing a problem for Muslim thinkers as it did for Christian theologians of the West. In short, Muslims carried a very different kind of theological baggage. Their view of Jews and Judaism was not so directly or heavily invested with anti-Jewish concerns as was the theology of the Latin church. These are no small distinctions, witness the contrasting fashion in which the deaths of Jesus and Muhammad are treated by Christians and Muslims respectively. So, again, we are faced with the question: What fueled harsh Muslim attitudes toward their seemingly inconsequential neighbors, the Jews?

It seems that, in large measure, the Muslim response to the Jews and Judaism stemmed from an intense competition to occupy the center of a stage held sacred by both faiths. The story of the Jews was a history

that Muslims appropriated in the Qur'an, its commentaries, and other Islamic texts. Moreover, Muslims refashioned that Jewish past as part of their own historic consciousness and world view. That is, Muslims claimed an authentic revelation as did the Jews, but they also claimed that the Jews rejected authentic *Jewish* scripture, which foretold Muhammad's prophetic coming, and — following a tampered version of the Hebrew Bible — suppressed disclosure of the true Jewish past, thus denying the obvious validity of Muslim claims. Until the emergence of modern Zionism, Muslims had no difficulty regarding the physical space occupied by Jews, nor was there great concern about their political temper; it was, rather, the Jewish failure to accept the authentic Muslim versions of an ancient Israelite past, and with that the Jewish denial of Muhammad's mission and his place among the monotheist prophets, venerated by Jews and Muslims alike, that required the concern, indeed, the condemnation of true believers. For, by its very nature, Jewish denial called into question the legitimacy of Islam.

Such as it was, the ideological conflict between Jews and Muslims was fought on familiar ground. The religious personae and events are often the same for both religious communities. The Qur'an, the text that Muslims held as revealed by God to Muhammad, is filled with stories of Biblical characters and happenings. Later exegetical works, borrowing directly or indirectly from Jewish sources, amplify greatly the themes and personalities dealt with in the Qur'an. The great Arabic chroniclers of the Middle Ages were similarly captivated by these stories and the commentary which they engendered. Anthologies preserving these and other themes drawn from ancient sources were published under separate cover, and the Muslim versions of Biblical tales became the recurrent focus of popular homilies. Collectively, the literature was known as *Isra'iliyyat*, that is, the tales of the Israelites. Immensely popular, the *Isra'iliyyat* percolated into every layer of Muslim society by means of the written and spoken word, and profoundly shaped the conventional wisdom that defined the nature of the Jew and his religion. Because Muslim versions of the Jewish past diverged substantially from the received traditions of contemporary Jewry, a history venerated by Jews and Muslims alike could, and did, become a bone of contention as well as a source of deeply felt respect and mutual acceptance.⁶

Aware that Jewish scripture and lore deeply penetrated their own tradition, medieval Muslim authorities engaged in a lively and often subtle discussion regarding the implication of this phenomenon.⁷ The school which eventually prevailed took a hard attitude, maintaining that the current Hebrew text was not to be trusted, for it had been inac-

6. See *EP*² s.v. *Isra'iliyyāt* and W.M. Thackston Jr., *The Tales of the Prophets of al-Kisā'i* (Boston, 1978) for further bibliography.

7. See M.J. Kister, "Ḥaddithū 'an banī isrā'īla wa-lā ḥaraja," *Israel Oriental Studies* ii (1972): 215-39.

curately transmitted and deliberately falsified. According to this view, the Hebrew Bible currently in use is not the true scripture of the Israelite tradition, that sacred text which foretold Muhammad's coming. Rather, it is based on inaccurate versions that were substituted for authentic manuscripts after the Temple was destroyed during the Babylonian conquest. Therefore, even with the best of intentions, skillful exegetes might not be able to restore the Biblical text and recover its original meaning. This school also calls attention to Jews who deliberately falsify sources for parochial reasons. Because citing texts on their authority may well lead the faithful astray, it is not considered permissible. In any case, Muslims maintained that the sacred practices incumbent on the Israelites had been abrogated with Muhammad's revelation. Thus, even if the original law of the Israelites were somehow recovered, it would, at best, provide a certain antiquarian interest. The thrust of these comments on Jewish scripture notwithstanding, the extant Hebrew Bible was cited against the Jews, often with the assistance of learned converts to Islam. As in the Christian West, polemicists took special license to study and quote Jewish scripture against the Jews when required by circumstances.⁸

Earlier attitudes, which were more complex, seem to reflect a certain ambivalence as regards the scripture of the Jews and, one might add, the Christians as well. A second, more lenient, school tended to regard the Torah (*Tawrat*) currently revered by Jews as an authentic document of God's revelation, an ancient Hebrew version of scripture comparable to the Arabic Qur'an. The seeming contradictions that arose from reading the two revealed texts might be resolved by Jews of good faith. It was simply a matter of explication. With the right exegetical tools and, above all, a proper attitude, those who denied Muhammad's legitimacy could be brought around to see how their interpretation of scripture perverted its true message. In any case, there was no compelling reason to exclude references to the Bible from Muslim writings. Indeed, both Hebrew and Arabic scripture were said to contain identical passages. Certainly, the benefits of citing the Hebrew Bible were not insignificant. In addition to foretelling Muhammad's mission, the Torah was said to contain a description of him and to indicate that Moses had instructed the Israelites to obey him. Similarly, the Psalms of David (*Zabur*) were said to address the future mission of the Prophet and the qualities of his people. Correctly understood, the authentic Biblical text contained proof of the legitimate link between Muhammad and the ancient Israelite prophets. An integral part of a larger historical paradigm learned by all Muslims, this link between Muhammad and God's previous emissaries, and between the current Muslim community

8. Various articles have appeared on Muslim-Jewish polemics. All build on the path breaking work of M. Steinschneider, *Polemische und apologetische Literatur im arabischer Sprache* (Leipzig, 1877; reprinted, Hildesheim, 1966).

and the ancient Israelites, was not to be questioned, let alone compromised. The Qur'an makes it implicitly, if not explicitly, clear that Muhammad is the last and greatest of all the monotheist messengers.

The transmission of non-scriptural Jewish materials, also a subject of considerable discussion, was generally looked upon by Muslims with even greater favor. The Prophet himself is quoted as saying, "Narrate traditions about the ancient Israelites." It was claimed that, as does the Bible, these later Jewish texts predict with great accuracy the events of more recent Islamic history. In fact, the learned Jew or Christian was often portrayed as a sage character who interprets mysterious apocalyptic texts of his own tradition and so predicts, as fate may have it, with remarkable accuracy, future happenings in the world of Islam. Needless to say, such accounts, when transmitted, were likely to lead to the edification of the Muslims. One might add, parenthetically, that Muslim apologists, whose remarks were directed to the religious and political struggles of their own society, found no shortage of Jewish and Christian sages to suit their proposes.⁹ In sum, to narrate traditions about the ancient Israelites was not only licit, it was desirable. All that notwithstanding, Muslim authorities are not certain that one should actually study the text of the Hebrew Bible, and it is more generally agreed that one may not study it with Jewish exegetes, although early practices might have been far more flexible than later medieval sources indicated and that some modern scholars are wont to believe.

One should be clear about this concern with the Jewish past. Whatever interest medieval Muslim authorities had in Jews and Judaism was linked to a passionate involvement with their own religion and society. There was, no doubt, curiosity about Jews, and the *Isra'iliyat* were read for enjoyment, but, for Muslims, the larger reason to reflect on this literature was to elaborate on the meaning of their own revealed text and to reaffirm the truth of their tradition while reflecting as false the claims of others. This approach to Jews and things Jewish is already found in Muhammad's public utterances, the Qur'an.

The Qur'an — according to Muslim doctrine, God's eternal and immutable word — was the skeletal structure around which the *Isra'iliyat* were formed. At the early stages of his career, even before circumstances brought Muhammad into sustained contact with the Jews, let alone conflict with them, his public utterances, that is, the revealed word of God, reflected themes from the Bible. Most commonly, but not exclusively, these are stories of the Hebrews loosely paralleled in the books of Exodus and Deuteronomy. A simple count of references reveals that Moses is by far the dominant figure of Muhammad's early pronouncements. The thrust of these early Qur'anic verses, like that of the Biblical text,

9. I am currently engaged in a study that deals with the Jew as one who foretells future Muslim history.

only more so, was to admonish those who do not heed God's chosen representatives. In the Jewish tradition, Moses' constituents were characterized as "a stiff necked (rebellious) lot." While at Medina, that is, during the political phase of his career, the Prophet was inclined to refer to Muslims of this sort as *munafiqun* or hypocrites, a term which not only connotes failure inwardly to accept God's dictates as pronounced by His Messenger, but failure to accept them knowing full well the difference between truth and falsehood. It was, therefore, intransigence rather than ignorance which compelled the *munafiqun* to resist the Prophet. Intransigence was similarly applied to the Jews of Medina, who, although recipients of a different revelation, are linked explicitly with the Muslim hypocrites. Because they, too, were the recipients of authentic revelation, the Jews should have known better than to question the Prophet's legitimacy and/or defy him as did the *munafiqun* in the political arena.

In theory, similar criticisms could have been levelled against Christians, the younger partners of the Biblical community, and, in fact, they were. For Christians, as well, distort the scripture that had been revealed to them, sacred writ which predicted, as did the Hebrew Bible, the future coming of Muhammad and the community of Islam. The Qur'an also admonishes Christians for false theological beliefs, that is, it criticizes those who believe in the Trinity and thus compromise the unity of God, He Who is One and Indivisible, Who is not begot and does not beget. But, after all is said, the Christians are less prominent targets of Qur'anic invective; it is the Jews who bear the brunt of criticism. For, unlike the Christians, who are blamed only for theological error, the Jews, who resisted Muhammad's prophethood, also played a central role in the political arena at the birth hour of Islam. According to Muslim tradition, they became the Prophet's opponents and the supporters of his most dangerous enemies. Engaging in these activities, they broke agreements between themselves and the Prophet that had been made in good faith. Thus, the Jewish rejection of Muhammad represented a denial twice delivered, and in the sharpest, most direct, and dangerous of confrontations.

A watershed in the Prophet's political career — if one can speak of watersheds in history — the *hijrah*, or emigration from Mecca to Medina, brought Muhammad into direct conflict with the Jews. Citing a common heritage shared by the Jews and the nascent Islamic community, the Prophet made direct overtures to his new neighbors. He established a clearly marked place for the local Jewish tribes in the political affairs of his new home. He also adopted the fast of Yom Kippur, set the orientation of prayer in the direction of Jerusalem, and accepted or, to state it more delicately, stressed a number of other practices similarly observed by Jews. Some of these practices may have been introduced by Muhammad even earlier.

But the Jews were not moved. With a time honored tradition of their own, they remained steadfast in their religious orientation, or so we can infer from Muhammad's contentious attitude towards them. While familiar in certain respects, Muhammad's stories of the ancient Israelites must have seemed incongruous to Jews generally familiar with classical Jewish sources. In any case, there are substantive differences between the Biblical tales of the Qur'an and those of the Hebrew Bible and post-Biblical literature. Muslim ritual practices that were at variance with Jewish law, for example *kashruth*, would have been even more problematic. The resulting crisis occasioned by the increasingly strained relations between Muhammad and the Jews was reflected in his later public utterances, the Qur'anic verses of the Medina period. Unable to convince the Jews of his prophecy, and finding them a potential, if not actual, source of subversion, as in the case of Zaynab's kinsmen, the Banu Qurayzah, the Prophet, speaking God's word, now revealed the Jews of Medina and their co-religionists elsewhere to be the contemporary analogues of Moses' stiff necked, wayward followers. Muhammad was, therefore, able to link the contemporary Jews in his Medinian revelation with their wayward ancestors of his earlier pronouncements at Mecca. At the same time, he linked himself to Moses and the other Israelite prophets of the past.

Moses, in particular, is juxtaposed with Muhammad in the Qur'an and the subsequent Arabic literature on the ancient Israelites. Time and again, sacred Muslim writings denote that Muhammad, the last of the prophets according to Islamic tradition, regarded Moses (the first according to Jewish tradition) as a predecessor who told the Israelites of Muhammad's future mission, and that this truth is duly recorded in the Hebrew Bible.

A Qur'anic passage (III:75) indicates to Muslim readers that *all* of the ancient Israelite prophets were asked to enter into a covenant with God at the time of their calling.¹⁰ In this agreement, they were called upon to affirm their faith in Muhammad's future coming, and to assist Muhammad in his eventual mission. This was to be done by drawing attention to the substance of the covenant in which they themselves declared the legitimacy of Muhammad's prophetic vocation and message. When queried by God, "Do you accept the burden which I have placed upon you?" they *all* answered, "We accept!" and then transmitted the substance of their agreement to their Israelite followers. What further proof was needed of recalcitrance among them regarding Muhammad's calling and of his link to their ancestors, which had been taught in good faith by God's previous messengers? Their recalcitrance was, therefore, at worst a falsification and at best a distortion of their

10. See my forthcoming article, "The Covenant of the Prophets: Muslim Texts, Jewish Subtexts," to appear in the *Association for Jewish Studies Review*.

own teaching. To deny Muhammad was to deny Moses and all of the monotheist prophets of the past, who accepted unwaveringly the future Muslim prophet and his calling.

In arguing that there were then, and are now, Jews who have abandoned the authentic traditions of the ancient Israelites, Muhammad's followers had no need to invent legends *ex nihilo*. Ironically, the Jewish tradition, with its unusually strong sense of guilt and self-criticism, was proof of their assertions and fuel enough to generate anti-Jewish remarks — the stories of Moses and his stiff-necked people being perhaps the most egregious examples. In this respect, at least, very little seems to have changed about Jewish self-reflection since ancient times.

Authenticated by the sanctity of scripture and by an extensive exegetical and historical literature, the linkage between the ancient Israelites defying Moses and contemporary Jews defying Muhammad, the designated prophet of his time, was forcefully stated and easily perceived without belabored explication at all levels of Muslim society. A highly negative view of the Jews was thus embraced as conventional wisdom by successive generations of Muslims.

To be sure, not all of the ancient Israelites required condemnation. Indeed, a wide variety of Muslim sources make it clear that, in the best of all worlds, the monotheists, Muslims, Jews, Christians, and others, would be seen as a religious community with unifying traditions deeply rooted in the past. For followers of Muhammad and contemporary Muslims as well, Islam was not a new departure, that is, an entirely new religion to be offered to humankind. From the outset of prophecy, there was only one true faith, albeit a faith revealed through different authentic revelations and in different languages. Seen by Muslims, the faith of Moses, the Hebrew lawgiver, is the faith of Islam. Or, put somewhat differently, the Biblical prophets and their followers among the ancient Israelites all submitted themselves totally to God, in accordance with the wider meaning of the Arabic verb *aslama*, the verbal noun *islam*, and the active participle *muslim*.¹¹ This distinction between Islam with a capital *I*, meaning the specific system of beliefs and practices expounded by Muhammad, and a more broadly defined *islam*, with a lower case *i*, practiced earlier by Jews and other monotheists in accordance with the authentic revelation of their prophets, is suggested in the Qurʾan and confirmed by a wide variety of texts that inform Muslim scripture.

11. On the development of the term *Islam*, see *Et*² s.v.; also D.H. Baneth, "What Did Muhammad Mean When He Called His Religion Islām? The original Meaning of Aslama and its Derivatives," *JOS* i (1971): 183-90; H. Ringgren, *Islām Aslama and Muslim* (Uppsala, 1949), a review of previous scholarship; M. Bravmann, *The Spiritual Background of Islam* (Leiden, 1972), pp. 7-26.

This linking of monotheist history prompts another observation. Oddly enough, modern scholars have paid little, if any, attention to the relationship between Muslim perceptions of their own history and the manner in which Muslims perceived Jews and a Jewish past. The linkage between Muslim self-reflection and the fashion in which they appropriated the history of the Jews is, nevertheless, critical to the understanding of interfaith relations past and present. Neglect of the larger historiographical context is likely to result in a skewed picture, one that is more easily adopted to parochial concerns. This matter is particularly complicated in current times by the overriding political considerations of the Arab-Israel dispute. Wistful discussions of earlier, more positive, Muslim-Jewish attitudes, and of stress-free communal relations reinforced by a heritage common to both societies, tend to distort, rather than clarify, historical circumstances. Nor is it accurate, or even useful, to describe pre-modern Jewish-Muslim relations in light of classical or European anti-Semitism.

Having been placed squarely within the general history of Islam by Muslims, Near Eastern Jews should be seen, not as modern apologists are inclined to view them, but as their patrons saw them in the medieval Near East, and as many Muslims continue to see them today, that is, through the filtered lenses of believing observers. And, whenever possible, the views of these medieval Muslim observers should be articulated using Muslim categories of definition, and explained according to Muslim views of historical processes.¹² To do otherwise is to impose a modern western sensibility on a proud and time-honored civilization.

In their own perception and recording of the past, Muslims tend to fudge discrete circumstance and specific places and times. The process, which can be traced to the very origins of Islamic historiography, was at first deliberate, and linked to intricate rhetorical strategies designed to promote the claims of one or another political or religious faction. The paradigm inspired by the Muslim chroniclers was, in essence, quite simple. Contemporary political figures were made the most fitting analogues to the Prophet, and the rule that they held or eagerly sought was heralded as a return to the halcyon days when Muhammad presided over the community of the faithful. In such fashion, rulers and would-be rulers called attention to themselves as his rightful successor. Muhammad was seen, in turn, as the analogue of the ancient prophets who preceded him in answering God's call, thus establishing his legitimacy as an authentic messenger to the larger community of mankind.

Recent events were, therefore, reinterpreted by Muslim writers to make them consonant with the ideals and circumstances of the Prophet

12. The rhetorical strategies of medieval Muslim polemicists are described by J. Lassner, *Islamic Revolution and Historical Memory* (New Haven, 1986), esp. pp. 1-33.

and his age. His actions, together with the experiences of the early Islamic community, were, in turn, made consonant with those of the monotheist prophets and peoples who preceded them. As a result, current times were inevitably recorded as if they were mirror images of the historic past. In such fashion, the ancient history of the Jews, already deeply embedded in the Qur'an and very much part of Muhammad's world view, became a subject of critical importance to Muslims in all generations.

As one might expect, the perceptions occasioned by this revision of history ultimately blurred and often obliterated important distinctions between generations and events. *Dramatis personae* become interchangeable; their utterances become variations of one another; labels and organizational structures are almost, if not in fact, identical. Even the description of external forces produces a sense of *déjà vu*. Complex realities were thus endowed with a compelling though highly artificial sense of symmetry. It were as though the apologist *cum* historian threw stones into the troubled waters of history and created with each toss perfectly concentric circles. Time and again, basic patterns were made to repeat themselves. In account after account, there are specific links, sometimes real, but often contrived, between the history of the ancient Israelites, the formative stages of Islam, and later developments of political and religious importance.

This historical outlook, which reflected internal Muslim concerns, had obvious and important implications for Near Eastern Jewry in pre-modern times. The hegemonic culture simply could not conceive of a Jewish past or present that was not subsumed within the all-embracing Muslim paradigm of history. When worthy of mention, the Jews were always described as the Qur'an and its commentary had made them out to be. And so, in addition to being proper models of behavior as was Moses, they could be pictured in any given age and region as falsifiers of scripture, recalcitrant ideologues, and unreliable partners to political agreements, just as they had been in the time of the Prophet Muhammad and in the times of Moses and the other prophets before Muhammad. Politically impotent though they were, the Jews continued to pay the price for their earlier indiscretions. Judging by the current volume of anti-Jewish literature in Islamic languages, it would appear that the image of the Jew continues to reflect this burden of the past.

Invoking history, medieval Muslims could demonstrate the inherent and eradicable shortcomings of those Jews who display recalcitrance. By opposing the Prophet and then aiding his enemies, the Jews proved themselves to be perfidious, thus reinforcing an unshakeable reputation for falsehood and treachery — a reputation that in less reflective moments could give credence to stories like that of Zaynab's revenge.

There was no claim, or even suggestion, that all Jews had been falsifiers of scripture and treacherous negotiators throughout the long

course of Jewish history. For the most part, those ancestors of the Jews who clung to the true revelation of the ancient prophets, that is, the true prophets before the coming of Muhammad, were retroactively referred to by Muslims as the Banu Israʿil, “the Children of Israel,” or perhaps more correctly “the Israelites.” Those who falsified this revelation were generally spoken of as al-Yahud, “the Jews.” In this fashion, “Yahud,” a generic term used in the pre-Islamic age to designate a group of specific religious persuasion, was eventually converted by anti-Jewish polemicists into a term that often suggested a wide range of pejorative meanings. More current polemics, which attempt to establish subtle distinctions between Jews as a religious community and Jews as participants in other forms of Jewish communal and political association, for example Israel and Zionism, are without historical precedent, and even now have little foundation at the level of popular culture.

We have to be judicious in assessing the impact of these overly determined and highly negative attitudes of the Muslim public. Strictly speaking, some of the post-Qurʾanic *Israʿiliyat* can be viewed as a popular form of didactic literature. The anthologized Biblical tales, as opposed to more technical works of religious scholarship, were neither designed nor primarily understood as polemical tracts. And, yet, they surely served the purpose of Muslim propagandists. One could, indeed, say that, in the long run, the mass appeal of these stories and the popular preachers who worked the streets and mosques citing them, were more effective in championing Islam than texts more explicitly intended as polemics. For larger audiences, entertaining stories were bound to be more compelling than the dry fare of theologians.

The actual impact of the popular *Israʿiliyat* traditions on anti-Jewish behavior is difficult to measure. As a rule, Muslim authorities invoked stern discriminatory practices only rarely, and, when invoked, they were often applied haphazardly. In any case, that is what Jewish sources seem to suggest. Nevertheless, even in those periods when the Islamic authorities were most benign in their treatment of Jewish communities, the *Israʿiliyat* tales must have had a subliminal effect on Muslim attitudes. The continuous retelling of these extremely popular stories thus helped to create a mental set that could produce rigid postures if and when the self-confidence of Muslim society was shaken, either from the stresses of its own internal dynamics or from the intrusion of outside actors who might be perceived as threatening, if not actually disturbing, the equilibrium of traditional Islamic society. In such disturbing times, religion often became a weapon turned against society in order to preserve its religious foundations and, by implication, its legitimate political and social structures. Such was the case in the times of the Crusades, the penetration of Western culture and, most especially, the creation of the State of Israel, which, like the Crusader states, was carved out of the historic Abode of Islam. A general hardening of the religious ar-

teries, applying to Muslims and non-Muslims alike, was bound to be felt most severely by the defenseless Jews. Ironically, it was perhaps the continued resilience of the Jews in the face of external pressure that was seen, and continues to be seen, by Muslims as most threatening when they, themselves, are in doubt.

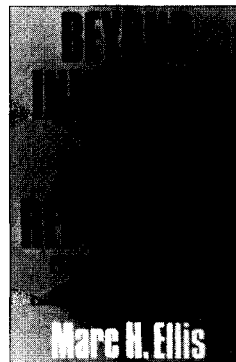
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Dr. Magnus Replies

TO THE EDITOR:

David Biale's defensive reading of my article, "'Out of the Ghetto': Integrating the Study of Jewish Women Into the Study of 'The Jew,'" misreads what I intended in my critique and even, quite plainly, what I wrote. An "ad hominem attack," moreover, which he alleges I lodged against him, is a personal one, whereas what I included in my article is a three paragraph critique of some of his writing (not one article, as he says, but two). It is a critique I stand by.

My article argues for the use of gender as a category of analysis in the writing of Jewish history. That means, as I state explicitly, that the male experience, as well as images of the idealized "Jewish man," are topics worthy of study. It is quite impossible to ignore the fact that men "like women (are) half of history," and disingenuous to suggest that men are likely soon to be overlooked as subjects of study; nor do I wish to "destroy the historiography of movements that were . . . exclusively male." What I object to are conceptualizations of history that necessarily exclude women's experience from consideration; writing that ignores, marginalizes or trivializes women's experience; and writing that portrays male experience while purporting to portray Jewish experience. It is an argument for consciousness of male bias in historiography, and it is in this context that I cite Biale's articles. His announced discussion of "Childhood, Marriage and the Family" is, in fact, a discussion of male perspectives and experience, something he could easily have acknowledged in a title such as

"Maskilim on Childhood . . ." or even "Male Perspectives on Childhood . . . During the Haskalah." Use of the term "Enlightenment" alone is too broad and vague for this purpose, since it often refers to a period and not only a (male) literary genre; Biale himself crosses this line in using rabbinic as well as maskilic sources. Contrary to what the titles would lead one to expect, Biale's articles focus on men, not social institutions; his cast-off comments about women are precisely that. Biale's reference to the memoirs of Pauline Wengeroff could have been the occasion for yet another critique of him, had I been interested in an *explication* of Biale's *texte*, which I was not; anyone who has studied those memoirs would not introduce a syllable of doubt, as Biale does, about whether girls, as well as boys, were traumatized by arranged marriages.

As to my checking Biale's sources before I voice a critique of how he uses them — that is absurd. It is the writer's burden to make her or his own case clearly, accurately and fully. However, having read the original source, I in no way change my characterization of the cited case as one of sexual molestation and incest, and can only wonder at Biale's apparent suggestion otherwise.

Finally, Biale merits no special dispensation because he is "one of the few . . . male historians" who, as he says, wishes to see "women integrated into Jewish history;" indeed, his claim is tantamount to yet another argument for male privilege. If anything, Biale's purported sensibilities place greater responsibility on him to be alert to his own biases which, I maintain, he manifestly was not in the cited articles.

Wyncote, Pa., SHULAMIT MAGNUS

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